1999

Sole Source Media, Inc. v. Prologic : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

SOLE SOURCE MEDIA, INC., a Utah corporation, Plaintiff-Appellee, v. PROLOGIC, a Utah partnership, and BRAD STEWART, Defendants-Appellants.	
BRAD STEWART, an individual, Third-Party Plaintiff, v. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Case No. ~~99801~~-CA 99801-CA Priority 15

BRIEF OF APPELLEES

Appeal From Orders and Judgment of the Third Judicial District Court, In and For Salt Lake County, State of Utah, The Honorable William W. Barrett Presiding

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(k), which provides for this Court to hear appeals "transferred to the Court of Appeals from the Supreme Court." The Utah Supreme Court poured over this case on November 3, 1999.

STATEMENT OF ISSUES

1. Issue: Was partial summary judgment properly granted to Plaintiff Sole Source Media, Inc. and Third-party Defendants Donald Junowich, William Morris, and Kevin Stitt based on the Employment Contract, which governed Defendant and Third-Party Plaintiff Brad Stewart's termination as an employee, and the Shareholders Agreement, which allowed Sole Source to repurchase Stewart's shares in the corporation?

Standard of Review: Utah appellate courts, in reviewing a grant of partial summary judgment, view the facts in a light most favorable to the losing party below and give no deference to the trial court's conclusions of law, but review them for correctness. *Blue Cross & Blue Shield v. State*, 779 P.2d 634 (Utah 1989).

2. Issue: Did the trial court abuse its discretion in denying Stewart's motion to compel discovery of information relating to Sole Source's financial condition after 1994?

Standard of review: A denial of a Motion to Compel is reviewed under an abuse of discretion standard. *See Archuleta v. Hughes*, 969 P.2d 409, 414 (Utah 1998).

3. Issue: Did the trial court err in awarding attorney fees to Sole Source in connection with its Motion for Partial Summary Judgment and the parties' discovery motions?

Standard of review: "Whether attorney fees are recoverable in an action is a question of law, which [this Court] review[s] for correctness." *Valcarce v. Fitzgerald*, 961 P.2d 305, 315 (Utah 1998). Nevertheless, "the trial court has 'broad discretion in determining what constitutes a reasonable fee, and [this Court] will consider that determination against an abuse-of-discretion standard." *Id.*

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

No constitutional provisions, statutes, or rules govern the issues in this appeal.

STATEMENT OF THE CASE

Nature of the Case

This is an action for breach of a non-compete agreement between Appellee Sole Source Media, Inc. ("**Sole Source**") and Appellant Brad Stewart ("**Stewart**"). Stewart was an officer, director, shareholder, and employee of Sole Source until November 4, 1994, when the other shareholders of the corporation, Donald Junowich ("**Junowich**"), William Morris ("**Morris**"), and Kevin Stitt ("**Stitt**"), voted to terminate his employment with Sole

Source. The vote came after Stewart announced the intention to form his own corporation and pursue business formerly held by Sole Source. Pursuant to the Shareholders Agreement between Sole Source and Stewart, the corporation then exercised its option to repurchase Stewart's shares. Stewart refused to return the shares arguing Sole Source tendered an inadequate purchase price. Sole Source later filed a Complaint alleging breach of contract on the part of Stewart.

Stewart answered with a Counterclaim and a Third-Party Complaint against Junowich, Morris, and Stitt. During the ensuing litigation, both sides served written requests for discovery. Sole Source sought discovery of information relating to its Amended Complaint and Stewart's Counterclaim, including documents which might show profits Stewart earned through his competing company Prologic, Inc. ("**Prologic**") and also any damages Stewart and/or Prologic may have suffered. Stewart refused to produce the discovery, but requested discovery from Sole Source relating to the corporation's and the shareholders' financial status. Sole Source refused to produce information for time periods after December 31, 1994. The parties both filed motions to compel and Sole Source also filed a motion for protective order.

This appeal arises essentially from three (3) rulings by the trial court. The first ruling granted partial summary judgment in favor of Sole Source and was memorialized in Findings of Fact and Conclusions of Law and a Judgment and Order dated December 14,

1998. The trial court concluded Stewart's employment had been properly terminated on November 4, 1994, and that Sole Source had properly exercised the option to repurchase Stewart's shares under the Shareholders Agreement. The trial court also concluded that the "agreed value" was one dollar ($1.00) per share. Stewart's refusal to accept the purchase price and return his shares to the corporation was a breach of the Shareholders Agreement.

The second ruling, contained in orders dated December 14, 1998 and April 26, 1999, granted Sole Source's Motion to Compel and its Motion for Protective Order, and denied Stewart's Motion to Compel.

Third, the trial court concluded that Sole Source was the prevailing party in the claims dismissed by summary judgment, and awarded attorney fees and costs for Sole Source's defense of those claims to the extent they were based upon the Employment Contract. The trial court also ruled that Stewart's Motion to Compel and defense of Sole Source's discovery motions was not substantially justified, and awarded attorney fees to Sole Source.

Course of Proceeding and Disposition Below

Sole Source filed a Complaint on or about October 24, 1995, and an Amended Complaint on or about February 8, 1996, alleging that Stewart had breached his non-compete agreement with Sole Source. Stewart filed a Counterclaim against Sole Source and a Third-

Party Complaint against Junowich, Morris, and Stitt which alleged the following causes of action:

1. Declaratory Relief;

2. Dissolution for Oppression of Minority Shareholder;

3. Tortious Interference with Contractual Relations and Economic Expectancies;

4. Breach of Covenant of Good Faith and Fair Dealing;

5. Breach of Fiduciary Duty;

6. Accounting and Judgment;

7. Punitive Damages;

8. Breach of Contract; and

9. Indemnification.

On or about March 3, 1998, Sole Source, Junowich, Morris, and Stitt filed a Motion for Partial Summary Judgment which sought dismissal of some of the claims in Stewart's Counterclaim and Third-Party Complaint. The trial court ruled in favor of Sole Source, concluding that Sole Source properly terminated Stewart's employment under the Employment Contract and also properly exercised its repurchase option under the Shareholders Agreement. The court dismissed Stewart's first, second, fourth, fifth, and eighth causes of action entirely, and his sixth cause of action to the extent it was based upon

events occurring after December 31, 1994. Sole Source sought and received an award of attorney fees relating to the MPSJ.

Sole Source also requested attorney fees for pursuing a Motion to Compel and for defending against Stewart's Motion to Compel. Sole Source's Motion to Compel sought discovery of tax, banking, and accounting information from Stewart and Prologic, and also information about Stewart's competition with Sole Source during the relevant time period. Stewart and Prologic refused to provide the requested information, arguing it was not discoverable.

Stewart's Motion to Compel sought discovery of certain financial information from Sole Source. Sole Source refused to produce some of this information because Stewart's status as a shareholder ended December 31, 1994 and he had no standing to request documents or information after that time.

The trial court heard arguments on all of these motions on July 1, 1998. The court issued a ruling and ultimately entered Findings of Fact and Conclusions of Law on December 14, 1998, granting the MPSJ, granting Sole Source's Motion for Protective Order, and denying Stewart's Motion to Compel. The parties agreed at the hearing to share customer lists and then produce documents for customers common to both parties, which resolved a small portion of Sole Source's Motion to Compel. The trial court granted Sole Source's motion to that extent by its December 14, 1998 Judgment and Order. The trial

court deferred ruling on the rest of Sole Source's Motion to Compel, suggesting that its ruling on the other motions might help the parties resolve the remaining discovery issues. However, the Court's later Order dated April 26, 1999 granted the remainder of Sole Source's Motion to Compel.

STATEMENT OF FACTS

Sole Source Media, Inc.

1. Sole Source was a Utah corporation in which Stewart, Junowich, Morris, and Stitt were shareholders. Sole Source dissolved automatically by the terms of its Articles of Incorporation on June 30, 1996. (*See* Addendum "H," Findings of Fact and Conclusions of Law dated December 14, 1998.) (R. 586.)

2. Sole Source was a graphics management company which provided its customers with a turnkey program of printing and graphic related services. (Amended Complaint, ¶ 1; R. 46.)

3. Stewart was an officer, director, and shareholder of Sole Source. (*See* Addendum "F," Affidavit of Kevin Stitt, ¶ 3.) (R. 241.) (*See* Addendum "G," Affidavit of William Morris, ¶ 3.) (R. 246.)

Stewart's Employment

4. Stewart entered an Employment Contract with Sole Source dated December 1, 1993 (the "**Employment Contract**"). (*See* Addendum "B," Employment Contract.) (R. 282-92.) The term of the Employment Contract extended to June 30, 1996, unless terminated previously according to its terms. (*Id.* at ¶ 2.) (R. 282-83.)

5. The Employment Contract provides that "Employee shall not, during the term hereof, be interested directly or indirectly, in any manner, [as a] partner, officer, stockholder, advisor, employee or in any other capacity in any other business of the type an [sic] character of business engaged in by Employer, or any allied trade . . .." (*Id.* at ¶ 5.) (R. 284.)

6. The Employment Contract provides that it may be terminated upon the employee's breach of the agreement. If the employee

> should engage in gainful employment with another employer without the express written consent of Employer, or should otherwise breach any of the terms of this agreement, Employer may regard this agreement as materially breached by Employee, Employer's obligation to make the payments herein shall cease, and Employer may obtain relief in the amount of damages suffered including a reasonable attorney's fee.

(*Id.* at ¶ 9.e.) (R. 289.)

7. The Employment Contract also provides that it may be terminated by Employer upon thirty (30) days written notice to Employee. (*Id.* at ¶ 9.d.) (R. 289.)

Stewart's Competition and Termination

8. In August 1994, Sole Source was notified by the Avery-Dennison Company ("**Avery**") that Avery would hire Sole Source to be manager for a significant project known as "Communique." However, after Avery delayed commencement of the Communique project, Sole Source determined it could not continue as project manager. (Morris Aff., ¶¶ 4-5.) (R. 246.)

9. At a meeting of the Sole Source shareholders on October 27, 1994, the shareholders discussed discontinuing the Communique project and also discussed terminating the employment of Alane Anderson and Anthony Dato, employees who were the general manager and lead coordinator of the Communique project for Sole Source. "Stewart stated that if Sole Source did resign the Avery project, he might be interested in pursing it individually." *See* Addendum "A," Counterclaim and Third-Party Complaint, ¶¶ 23-25. (R. 62.)

10. After Junowich left the October 27 meeting, Stewart told Morris and Stitt that he would not work with Junowich and suggested terminating Junowich. Over the following weekend, Stewart told Morris and Stitt that he planned to open a new business with Anderson to handle the Communique project. (Morris Aff., ¶¶ 8-9; Stitt Aff., ¶¶ 6-7.) (R. 246, 242.)

11. On November 4, 1994, a meeting of Sole Source shareholders was held with Junowich participating by telephone. Stewart attended the meeting which was held at Sole Source's principal corporate office, and voiced no objection to the meeting being held or to the shareholders considering agenda items without prior notice. (Stitt Aff., ¶¶ 8-9.) (R. 242.)

12. The November 4 meeting was called to consider terminating Stewart because he was forming a competing business. (Morris Aff., ¶ 10; Stitt Aff., ¶ 9.) (R. 247, 242.) The shareholders voted to terminate Stewart's employment as Vice President of Sole Source. Junowich, Morris, and Stitt each voted in favor, and Stewart abstained. (R. 294-95.)

13. Stewart now owns and operates Prologic which was established as a competitor of Sole Source. (R. 54, 588.)

Shareholders Agreement and Repurchase Option

14. All shareholders including Stewart also signed a Shareholders Agreement dated July 1, 1993 (the "**Shareholders Agreement**"). *See* Addendum "C," Shareholders Agreement. (R. 271-80.) Paragraph 10(a) of the Shareholders Agreement gave Sole Source an option to purchase all of Stewart's shares in the event his employment was terminated "for any reason other than death . . .." (*Id.* at ¶ 10(a).) (R. 275.)

15. The Shareholders Agreement specifies the purchase price in the event Sole Source exercises the option to repurchase shares, as follows:

> The Purchase Price shall be the "agreed value" determined in accordance with subsection (b), subject to adjustment by the independent certified public accountant then serving the Corporation to reflect material events and changes in circumstances occurring subsequent to the date on which the agreed value was last fixed.

(*Id.* at ¶ 12(a).) (R. 277.)

16. Paragraph 12(b) of the Shareholders Agreement defines "agreed value" as follows:

> Until changed as provided hereafter, the "agreed value" per Share as of the date of this Agreement is one Dollar ($1). This price has been agreed upon by the Corporation and the Shareholders as representing the fair value per share.

(R. 278.)

17. Paragraph 12(b) then provides that at the end of each year the shareholders shall in writing reaffirm the "agreed value" or agree upon a new value. If neither occurs, then the Agreement provides as follows:

> In the event that the stockholders and the Corporation fail either to reaffirm the value per share or agree upon a new value as of the end of any fiscal year, the agreed value most recently fixed shall, subject to adjustment pursuant to subsection (a), continue in effect for all purposes.

(R. 278.)

18. The shareholders of Sole Source did not reaffirm the agreed value or agree upon a new value at the end of 1993 or at the end of 1994. (Stitt Aff., ¶ 11.) (R. 242.)

19. The accountant serving Sole Source during 1993 and 1994 made no adjustment in the agreed value per share. (*Id.* at ¶ 12.) (R. 242.)

20. When Sole Source was formed and the Shareholders Agreement was prepared, the shareholders agreed that the value of Sole Source stock should be $1.00 per share in order to discourage a shareholder from leaving and starting a competing business. (Morris Aff., ¶ 11; Stitt Aff., ¶ 13.) (R. 247, 243.)

21. By Notice dated December 5, 1994, sent to Stewart via certified mail, Sole Source exercised its option under the Shareholders Agreement to purchase Stewart's shares. The Notice tendered the sum of $1.00 per share as the purchase price. *See* Addendum "D," Notice of Exercise of Option and Shareholders Action. (R. 297-98.)

22. Stewart received the Notice and tender of purchase price but has failed and refused to surrender the shares. (R. 66-67.)

Trial Court Proceedings

23. Stewart's Counterclaim and Third-Party Complaint alleged causes of action for declaratory relief, dissolution for oppression of minority shareholder, interference with contractual relations and economic expectancies, breach of covenant of good faith and fair dealing, breach of fiduciary duty, accounting and judgment, breach of contract, and indemnification. (R. 53-80.)

24. Sole Source filed a Motion for Partial Summary Judgment dated March 3, 1998. The trial court granted the Motion and dismissed Stewart's First, Second, Fourth, Fifth, and Eighth causes of actions entirely, and the Sixth cause of action to the extent it was based upon events occurring after December 31, 1994. (*See* Addendum "J," Judgment and Order dated December 14, 1998.) (R. 597-98.)

25. Sole Source filed a Motion to Compel dated March 19, 1998, seeking to compel production of documents from Stewart. (R. 315-17.)

26. Stewart filed his own Motion to Compel Production of Documents on February 3, 1998. (R. 143-45.) In response to that Motion, Sole Source, Morris, Stitt, and Junowich filed a Memorandum in Opposition dated February 12, 1998 (R. 177-211), and also a Motion for Protective Order dated February 13, 1998. (R. 212-15.)

27. All of those Motions were fully briefed and argued to the trial court on July 1, 1998 (R. 449), and again on November 17, 1998. At the November 17 hearing, the trial court granted Sole Source's Motion for Protective Order and denied Stewart's Motion to Compel. The trial court subsequently entered Findings of Fact and Conclusions of Law and a Judgment and Order on December 14, 1998, implementing those rulings. (R. 596-99.)

28. After reserving its ruling for a time on Sole Source's Motion to Compel, the trial court issued a ruling on April 12, 1999, granting the Motion, and entered an Order

on April 26, 1999. (*See* Addendum "K," Order Granting Plaintiff's Motion to Compel, dated April 26, 1999.) (R. 620-23.)

29. Sole Source, Junowich, Morris, and Stitt were awarded $8,394.85 in attorney fees and $367.82 in costs, for a total of $8,762.67, for prevailing in the defense of Stewart's claims related to the Employment Contract, and for successfully pursuing and defending the discovery motions described above. (*See* Addendum "L," Findings of Fact and Conclusions of Law, dated July 13, 1999 (R. 711-16) and Addendum "M," Order Awarding Attorney Fees, dated July 13, 1999.) (R. 717-19.) The attorney fees were based upon the number of hours worked and the respective rates charged as identified in the Affidavit of Matthew C. Barneck, ¶¶ 4-8. (*See* Addendum "N." (R. 649-55.) The costs incurred are itemized in ¶ 9 of the Affidavit. (R. 652-53.)

SUMMARY OF THE ARGUMENT

Sole Source filed a Motion for Summary Disposition in the Utah Supreme Court before the case was poured over to this Court. The basis for that Motion is that the Orders appealed from are not final under Rule 54(b) of the Utah Rules of Civil Procedure, and therefore this Court has no jurisdiction to hear the appeal. By Order dated November 1, 1999, the Utah Supreme Court deferred ruling on that Motion until further consideration of the appeal.

Sole Source properly terminated Stewart's employment with the corporation, pursuant to the Employment Contract. Stewart himself acknowledged that his employment was terminated as of November 4, 1994. No unanimous vote was required to terminate Stewart's employment. The plain language of the Shareholders Agreement gave Sole Source the right to repurchase Stewart's shares at the "agreed value" should his employment be terminated for any reason other than death.

The vote to terminate Stewart's employment triggered Sole Source's repurchase option. Under the Shareholders Agreement, the purchase price would be the "agreed value" of one dollar ($1.00) per share unless the shareholders agreed to change the agreed value within sixty days after each calendar year. If the shareholders failed to do so, the agreed value of the stock would remain at one dollar. The Shareholders Agreement also provides that the independent certified public accountant serving the corporation may adjust the agreed value based upon subsequent material events and changes in circumstances. The unambiguous language of the Shareholders Agreement does not *require* an adjustment to the value of the stock before exercise of the repurchase option. Rather, the agreement provides that the agreed value *may* be adjusted to reflect material events and changes in circumstances.

The trial court properly awarded attorney fees to Sole Source based on its grant of partial summary judgment in favor of Sole Source. The Employment Contract provides for an attorney fee award to the successful party for any action filed in relation to that

agreement. Although the Shareholders Agreement does not provide for an attorney fee award, the trial court's ruling was based on the defense of claims related to the Employment Contract. Moreover, the trial court's allocation of attorney fees was adequately supported by the evidence and was properly based on the kind of legal work was performed, how much of the work was reasonably necessary, whether the billing rate was consistent with local billing rates, and if circumstances required the consideration of other factors.

The trial court also was within its sound discretion to award attorney fees to Sole Source both for pursuing its Motion to Compel and defending against Stewart's Motion to Compel. Rule 37(a) of the Utah Rules of Civil Procedure mandates that a trial court shall award attorney fees to the prevailing party in a discovery dispute unless the trial court finds that the motion or defense was substantially justified or if justice requires otherwise. Sole Source's motion sought discoverable material directly relevant to Sole Source's and Stewart's claims based on the non-compete agreement, and Stewart's opposition to that motion was not substantially justified. Likewise, Stewart's Motion to Compel discovery of financial information for time periods after 1994 was not substantially justified because Stewart's status as a shareholder terminated as of December 31, 1994.

ARGUMENT

POINT I

THE COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE ORDERS APPEALED FROM ARE NOT FINAL UNDER UTAH R. CIV. P. 54(b).

Appellees believe that the orders appealed from in this action are not final under Rule 54(b) of the Utah Rules of Civil Procedure. The claims appealed factually overlap the claims that remain in the trial court such that they are "based upon the same operative facts . . .." *Kennecott Corp. v. Utah State Tax Comm.*, 814 P.2d 1099, 1103 (Utah 1991). The facts and law supporting this argument are set forth in greater detail in Appellees' Motion for Summary Disposition dated October 13, 1999 and the Memoranda supporting that Motion. By Order dated November 1, 1999, the Utah Supreme Court deferred ruling on the Motion until further consideration of this appeal. By Order dated November 3, 1999, this matter was transferred to the Utah Court of Appeals for disposition.

This Court should now consider the issues framed in Appellees' Motion for Summary Disposition at this stage of the appellate process. Accordingly, Appellees adopt by reference the facts and law set forth in their Motion for Summary Disposition and supporting Memoranda. For those reasons, the Court should dismiss the appeal for lack of jurisdiction.

POINT II

SOLE SOURCE PROPERLY TERMINATED STEWART'S EMPLOYMENT, THUS TRIGGERING SOLE SOURCE'S REPURCHASE OPTION UNDER THE SHAREHOLDERS AGREEMENT.

A. Stewart's Termination.

Under the terms of the Employment Contract, a shareholder's employment could be terminated if he "should engage in gainful employment with another employer without the express written consent of Employer, or should otherwise breach any of the terms of this agreement . . .." (Employment Contract, ¶9.e.) (R. 289.) Paragraph 5 of the Employment Contract provides that "Employee shall not, during the term hereof, be interested directly or indirectly, in any manner, [as a] partner, officer, stockholder, adviser, employee or in any other capacity in any other business of the type an [sic] character of business engaged in by Employer, or any allied trade . . .." (*Id.* at ¶ 5.) (R. 284)

By announcing his intention to form a competing business to pursue the Avery contract, Stewart breached paragraph 5 of the Employment Contract. It was undisputed that Stewart intended to form a separate company to pursue the Avery contract if Sole Source resigned from it, and that he in fact did form Prologic for that reason. The trial court's finding to that effect was based upon Stewart's own statements in his Counterclaim and Third-Party Complaint, ¶¶ 23-25 (R. 62), and his Affidavit dated March 27, 1998, ¶ 21. (R. 388.) Those statements were consistent with the facts set forth in the Morris and Stitt

Affidavits (R. 241-42, 246-47), and the Minutes of the Sole Source Shareholders' meeting dated November 4, 1994. (*See* Addendum "E," Meeting Minutes.) (R. 295.)

A shareholder's employment also could be terminated "on thirty (30) days written notice to [the] Employee." (Employment Contract, ¶ 9.d.) (R. 289.) Stewart was given written notice of his termination on November 4, 1994. (R. 424.) Along with the termination notice, Sole Source proposed a separation agreement which offered to pay Stewart's salary for the thirty-day period. (R. 426.)

Stewart acknowledged his termination and the separation agreement in subsequent writings, and specifically that he received the termination notice. On November 7, 1994, Stewart signed an agreement with Sole Source waiving the non-compete clause of his Employment Contract "with regard to the Avery-Dennison account . . .." (R. 428-29.) The waiver is implicitly based upon the termination of Stewart's employment at Sole Source. Stewart also sent a Memorandum to Sole Source dated December 12, 1994, outlining certain financial issues "which require discussion and resolution, *pursuant to my termination from Sole Source*." (*See* Addendum "F," Memorandum to Sole Source Shareholders, p. 1.) (emphasis added). (R. 431-32.) Finally, in an Affidavit of Brad Stewart dated April 8, 1998, filed in the trial court in this action, Stewart acknowledges receiving the termination notice on or about November 4, 1994. (R. 407-08.)

These undisputed facts show that Stewart's employment was terminated as of November 4, 1994, and that his termination satisfied both Paragraphs 9.e. and 9.d. of the Employment Contract.

B. Sole Source's Repurchase Option.

According to the Shareholders Agreement, Sole Source could exercise its option to purchase the shares of any shareholder "[i]n the event of the termination of *employment* of a Shareholder with the Corporation for any reason other than death . . .." (Shareholders Agreement, ¶ 10(a) (emphasis added).) (R. 275.) The repurchase option is not conditioned upon Stewart's removal as an officer or director, but only upon his termination of employment.

Stewart scarcely mentions the Employment Contract in his Brief and instead spends the majority of his argument explaining that his removal as an officer and director was done without unanimous consent. Nevertheless, the repurchase option was not triggered by any action relating to Stewart's position as an officer or as a director of the corporation, but by the termination of his *employment*. No unanimous vote was required to terminate Stewart's employment. His termination was proper and Sole Source had the option to repurchase Stewart's shares at the "agreed value" under the Shareholders Agreement.

POINT III

THE TRIAL COURT CORRECTLY CONCLUDED THAT THE "AGREED VALUE" OF STEWART'S SHARES WAS ONE DOLLAR.

Stewart does not dispute that Sole Source gave proper notice of its exercise of the repurchase option, or that he received the notice and the tendered purchase price. Instead he argues the tendered purchase price was incorrect and that the exercise was therefore invalid.

Contrary to Stewart's argument, applicable Utah case law declares that when the repurchase agreement contains a clear method for determining the purchase price, exercise of the option terminates the employee's status as a shareholder. *Davies v. Semloh Hotel, Inc., et al.*, 86 Utah 318, 44 P.2d 689, 690-91 (1935) (parties intended that title to stock should pass to corporation upon employee's discharge); *see also Taylor v. Daines, et al.*, 118 Utah 61, 218 P.2d 1069, 1072-73 (1950) (shareholder's equitable or beneficial interest in stock passed to corporation upon exercise of option). Professor Fletcher's treatise on corporations states the same rule:

> The seller may be given the option to repurchase the stock on specified terms. *If those terms of the stock purchase agreement are clear and unambiguous, it is the duty of the court to enforce it as written.*

Fletcher Cyclopedia on Corporations, § 5617, p. 388 (emphasis added). Such stock repurchase agreements "may be specifically enforced." *Id.* at § 5617, p. 386.

The case of *Webb v. R.O.A. General, Inc.*, 773 P.2d 834 (Utah Ct. App. 1989) does not support a different result in this case. The Court in *Webb* cites *Davies v. Semloh* and *Taylor v. Daines* as good law. *Id.* at 838 n.2. In *Webb*, the repurchase option did not fix a purchase price but instead provided that the parties would engage in an alternating appraisal process to arrive at a price. *Id.* at 835-36. Accordingly, the Court concluded the contract did not intend title to the shares to pass upon exercise of the option. *Id.* at 838-39.

The terms of the Shareholders Agreement in this case are clear and unambiguous, and it was the trial court's duty to enforce the Agreement as written. *Fletcher*, § 5716. Paragraph 10(a) of the Shareholders Agreement clearly gives Sole Source the right to repurchase Stewart's shares upon his termination "for any reason other than death." (R. 275.) Paragraph 12 establishes the purchase price as the "agreed value" of $1.00 per share "unless changed hereafter . . .." (Shareholders Agreement, ¶ 12(a).) (R. 277.) This was the price "agreed upon by the Corporation and the Shareholders as representing the fair value per share." (*Id.* at ¶ 12(b).) (R. 278.) The Shareholders Agreement provides that the "agreed value" may be changed at the end of a fiscal year if (i) the shareholders agree upon a new value or (ii) the value is adjusted by the independent certified public serving the corporation "to reflect material events and changes in circumstances" occurring since the agreed value was last fixed. (*Id.* at ¶¶ 12(a), (b).) (R. 277-78.) If the agreed value is not so changed, then the last agreed value shall "continue in effect for all purposes." (*Id.* at ¶ 12(b).) (R. 278.)

It is undisputed that the Sole Source shareholders did not agree upon a new value per share and that the value was never adjusted by the company's accountant. Thus, the "agreed value" in December 1994 was $1.00 per share. The Notice of Exercise of Option and Shareholders Action both recited and tendered the proper purchase price of $1.00 per share. Stewart does not dispute that the last "agreed value" was $1.00 per share. Yet Stewart admits that he refused to tender his shares to Sole Source only because he challenges the tendered purchase price. On those undisputed facts, the trial court correctly enforced the Shareholders Agreement and declared Stewart's status as shareholder terminated as of December 31, 1994.

Stewart nevertheless contends adjustment of the agreed value by the accountant was mandatory and not permissive. He argues the words "subject to" *required* the accountant to adjust the agreed value, rather than *permitting* an adjustment if circumstances warranted it. Stewart's argument runs counter to the plain language of the agreement and the intent of the parties. To ascertain the intent of the parties to a contract, courts first look to the four corners of the agreement. *Krauss v. Utah State Dept. of Transp.*, 852 P.2d 1014 (Utah Ct. App. 1993) (overruled on other grounds). In so doing, the court must consider each provision in relation to all the others. *Willard Pease Oil v. Pioneer Oil & Gas Co.*, 899 P.2d 766, 770 (Utah 1995). The primary rule in contract interpretation is to determine what the parties intended "by looking at the entire contract and all of its parts in relation to each other,

giving an objective and reasonable construction to the contract as a whole." *Sears v. Riemersma*, 655 P.2d 1105, 1107-08 (Utah 1982). When a written contract is unambiguous, the intent of the parties can be determined from the words of the agreement and extrinsic evidence is not considered. *R & R Energies v. Mother Earth Ind.*, 936 P.2d 1068, 1074 (Utah 1997) (citing Black's Law Dictionary, 73 (5th ed. 1979)).

The intentions of the parties are clear from the face of the Shareholders Agreement, and Stewart's arguments must fail. First, the Shareholders Agreement uses mandatory language in several places in contrast to the words "subject to." For instance, Paragraph 10 of the Agreement states that the corporation "*shall* have the option to purchase all of the Shares owned by [a] Shareholder at his or her termination of employment." (R. 275.) The Agreement also mandates that the purchase price "*shall* be determined" according to Paragraph 12(a) and (b). (R. 277-78.) Notice to any shareholder "*shall* be personally delivered or mailed by registered or certified mail," (*id.* at ¶ 16(a)), and the Agreement "*shall* be governed by the laws of the State of Utah." (*Id.* at ¶ 16(c).) (R. 279.) The Shareholders Agreement easily could have used the word "shall" to create a mandatory adjustment by the accountant, but instead it twice uses the words "subject to."[1] This

[1]In support of his argument that the words "subject to" somehow invoke a condition precedent, Stewart cites *GRD Development Co., Inc. v. Foreca, S.A.*, 747 S.W.2d 9 (Tex. Ct. App. 1988), and *Ryiz v. Federal Insurance Co.*, 497 A.2d 1001 (Conn. Ct. App. 1985) as persuasive authority. The cases hold that the words "subject to" may condition an event upon the occurrence of a preceding event, but only in general terms. Thus, the *GRD* court stated that "employment of such words as . . . 'subject to' ***usually*** indicate that a promise is not to

contrasting language supports the trial court's conclusion that adjustment by the accountant was permissive and not mandatory. The trial court thus correctly considered the provisions at issue "in relation to all of the others, with a view toward giving effect to all and ignoring none." *Plateau Min. v. Utah Div. of State Lands*, 802 P.2d 720, 725 (Utah 1990) (citation omitted).

Second, the Shareholders Agreement provides for an adjustment by the accountant only "to reflect material events and changes in circumstances" occurring since the agreed value was last fixed. (Shareholders Agreement, ¶ 12(a).) (R. 277.) When Stewart was terminated, the corporation was less than 18 months old. Even if the accountant had reassessed the agreed value, there is no evidence that any "material events and changes in circumstances" had occurred to support a different value. This language shows the parties intended that no adjustment would occur if there were no such events or circumstances. No shareholder—including Stewart—made a request for an adjustment of the agreed value at any time before Sole Source exercised its option to repurchase Stewart's shares,[2] which indicates

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be performed, except upon a condition or happening of a stated event." Likewise, the *Ryiz* court went only so far as to hold that "subject to" means "***likely*** to be conditioned, affected, or modified in some indicated way."

[2]Stewart's contention that his request for an adjustment on December 12, 1994, creates a disputed material fact is without merit. His request on that date is not a material fact because it came after the repurchase option already had been exercised.

that none of them believed any "material events and changes in circumstances" had occurred. The agreed value, therefore, remained at one dollar ($1.00) per share.

Third, Stewart's argument that $330.00 did not adequately compensate him for his share of the company (and therefore a mandatory adjustment must have been intended) ignores the intent of the Shareholders Agreement as a whole. According to the Agreement, the shareholders most likely would not receive a return on their investment through an adjustment of the agreed value per share but instead would receive returns through quarterly distributions. Paragraph 3 provides that all profits were to be distributed to the shareholders and the company's practice was to distribute quarterly. For example, as stated in his opening Brief, Stewart received his thirty-one percent (31%) share of the $234,000.00 profit earned during the third quarter of 1994. Stewart actually earned many times his initial $10,000 investment, and his claim that "[i]t is simply unconscionable that [his] ownership interest in the corporation he built from nothing could be stolen from him for a mere $330.00" is disingenuous at best. (Brief of Appellant, p. 31.)

The trial court's ruling was not "harsh" or "inequitable," but reflects an understanding that the Shareholders Agreement was designed to provide return through quarterly distributions and to discourage shareholders from leaving the enterprise by imposing a low one dollar ($1.00) agreed value. (*See* Morris Aff., ¶ 11; Stitt Aff., ¶ 13.)

(R. 247, 243.) There was no error in the trial court's conclusion that the agreed value per share remained at one dollar when Sole Source exercised its option to repurchase.

POINT IV

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEY FEES TO SOLE SOURCE PURSUANT TO THE SUMMARY JUDGMENT MOTION.

A. Summary judgment was granted based on the Employment Contract and the Shareholders Agreement.

Sole Source, Junowich, Morris, and Stitt moved for partial summary judgment to dismiss several causes of action in Stewart's Counterclaim and Third-Party Complaint. As discussed above, the trial court correctly granted summary judgment in favor of Sole Source. Stewart's termination from Sole Source was governed by the Employment Contract between Stewart and Sole Source, and the trial court relied on that agreement in reaching its conclusion. The trial court's decision that the termination was proper necessarily preceded its decision that the repurchase option was properly exercised. Because the Employment Contract expressly provides for an award of attorney fees to a party who is successful in "any action . . . filed in relation to" the Employment Contract, the trial court was well within its discretion to award attorney fees to Sole Source.

Stewart correctly argues that attorney fees in Utah are generally only awarded pursuant to a contract at issue or pursuant to an applicable statute. *See Valcarce v.*

Fitzgerald, 961 P.2d 305, 315 (Utah 1998). "Fees provided for by contract, moreover, are allowed only in strict accordance with the terms of the contract." *Foote v. Clark*, 962 P.2d 52, 54 (Utah 1998) (citing *Dixie State Bank v. Bracken*, 764 P.2d 985, 988 (Utah 1988) and *Turtle Management, Inc. v. Haggis Management, Inc.*, 645 P.2d 667, 671 (Utah 1982)). Stewart maintains, however, that the award was improper because the trial court's decision was based *solely* on the Shareholders Agreement, which contains no attorney fee provision. The argument is simply in error.

Sole Source, from the very beginning, asserted that the Employment Contract was central to its Motion. In its opening Memorandum in the trial court, Sole Source alleged the following:

> 4. All shareholders including Stewart signed a Shareholders Agreement dated July 1, 1993 (the "Shareholders Agreement") . . . . Paragraph 10(a) of the Shareholders Agreement gave Sole Source an option to purchase all of Stewart's shares in the event his employment was terminated "for any reason other than death . . . ." [*See* Shareholders Agreement, ¶ 10(a).]
>
> 5. *Stewart also entered an Employment Contract dated December 1, 1993 (the "Employment Contract") . . . . The term of the Employment Contract extended to June 30, 1996, unless terminated previously according to its terms.* [*See* Employment Contract, ¶ 2.]
>
> 6. *The Employment Contract provides that "Employee shall not, during the term hereof, be interested directly or indirectly, in any manner, [as a] partner, officer, stockholder, adviser, employee or in any other capacity in any other business of the type an [sic] character of business engaged in by Employer, or any allied trade . . . ." [See*

> *Employment Contract, ¶ 5.] The Employment Contract also provides that it may be terminated upon an employee's breach of the agreement.* [*See* Employment Contract, ¶ 9.e.]

(R. 256-57 (emphasis added).) Sole Source argued that, because Stewart had violated the terms of the Employment Contract, his employment was terminated, and that termination triggered the corporation's option to purchase Stewart's shares.

The trial court held in its Judgment and Order dated December 14, 1998, that Stewart had an employment agreement with Sole Source, that the agreement conditioned termination of employment on the employee's breach of that agreement, and that Stewart indeed breached the agreement by starting a competitive business. (R. 596-99.) The Order further states that "Stewart acknowledged '[his] termination from Sole Source.'" *Id.* Six months later, the trial court awarded attorney fees. The trial court found that Stewart's "Counterclaim alleged certain causes of action based upon an Employment Contract dated December 1, 1993, between Defendant Brad K. Stewart . . . and Plaintiff Sole Source Media, Inc. . . . , including claims for declaratory judgment, breach of contract, and breach of the implied covenant of good faith and fair dealing." (R. 712.)

Thus, the Employment Contract was not only implicated by Sole Source's Motion but also was relied upon by the trial court in making its ruling. Moreover, the Employment Contract does not limit an award of attorney fees to a successful party to a claim based strictly on the agreement itself. The agreement provides for attorney fees "[i]n

the event that any action is filed *in relation to this Contract.*" (Employment Contract, ¶ 16 (emphasis added)). (R. 292.) Certainly, Stewart's claims for breach of contract, declaratory judgment, and breach of the implied covenant of good faith and fair dealing—all of which address Stewart's termination of employment—are an action filed "in relation to" the Employment Contract. An award of attorney fees to Sole Source, therefore, was proper and not an abuse of discretion.

B. Allocation of fees

Stewart next argues the trial court did not properly allocate fees among the claims on which Sole Source prevailed. "Whether attorney fees are recoverable" and "whether the trial court's findings of fact" sufficiently support an award are questions of law, reviewed for correctness. *Valcarce v. Fitzgerald*, 961 P.2d 305, 314 (Utah 1998). Nevertheless, "the trial court has 'broad discretion in determining what constitutes a reasonable fee, and [this Court considers] that determination against an abuse-of-discretion standard.'" *Id.* (quoting *Dixie State Bank v. Bracken*, 764 P.2d 985, 991 (Utah 1988)). The reviewing court must uphold the trial court's award absent "'patent error or clear abuse of discretion.'" *Id.* at 316 (quoting *City Consumer Serv., Inc. v. Peters*, 815 P.2d 234, 240 (Utah 1991) (other citation and quotations marks omitted)).

The evidence in this case adequately supports the trial court's award. Counsel for Sole Source provided the trial court with a Memorandum and Affidavit supporting the

request for attorney fees. The Affidavit set forth in detail the amount of time spent and the fees incurred in litigating the discovery issues and the Motion for Partial Summary Judgment. (*See* Affidavit of Matthew Barneck.) (R. 649-55.)

Moreover, Sole Source recited in its supporting memorandum to the trial court the standards announced in *Foote v. Clark*, 962 P.2d 52, 55 (Utah 1998), and *Valcarce* for the proper method to evaluate a request for attorney fees. (R. 632.) In fact, Sole Source urged the trial court, pursuant to *Valcarce*, to consider what type of legal work was performed, how much of that work was reasonably necessary, whether the billing rate was consistent with local billing rates, and if circumstances required the consideration of other factors. (*Id.*) Sole Source also recognized that a party seeking attorney fees "must allocate its fee request according to the underlying claims, and must categorize the time and fees expended for successful claims or claims for which there is no entitlement to attorney fees." Memorandum (citing *Foote*, 962 P.2d at 55 and *Cottonwood Mall Co. v. Sine, et al.*, 830 P.2d 266, 269-79 (Utah 1992)). (R. 632.) Counsel for Sole Source did so in his supporting affidavit.

Sole Source also acknowledged that "Stewart's Counterclaim for breach of the Employment Contract was intertwined with his claim for breach of the Shareholders Agreement," and explained to the trial court that its "defense was in part based upon interpretation of the Shareholders Agreement. Additionally, the Motion for Partial Summary

Judgment also sought the dismissal of Stewart's claims for breach of fiduciary duty (Fifth Cause of Action) and for an accounting (Sixth Cause of Action)." (R. 634-35.)

Stewart also alleges Sole Source essentially conceded "that it should receive only fifty percent of the fees incurred in bringing its Motion because the claims at issue also involved the Shareholder Agreement," which does not provide for an attorney fee award. (Brief of Appellant, p. 39.) Stewart's characterization is inaccurate. Without conceding that an award of fees should be split, Sole Source requested "an award of *at least* fifty percent" (R. 635) of the total fees incurred, leaving the determination of whether to allocate the award and the appropriate percentage to the trial court. (*Id.*)

C. Sole Source is the successful party of this litigation.

"Where there was a right to attorney fees, Utah courts have allowed the party who successfully prosecuted or defended against a *claim* to recover the fees attributable to those claims on which the party was successful." *Occidental/Nebraska Fed. Sav. Bank v. Mehr*, 791 P.2d 217, 221 (Utah Ct. App. 1991) (emphasis added). Accordingly, a court should use "'a flexible and reasoned approach to deciding in particular cases who actually is the prevailing party.'" *Id.* (quoting *Mountain States Broadcasting Co. v. Neale*, 783 P.2d 551, 556 n.7 (Utah Ct. App. 1989)).

Stewart argues that because some issues relating to the Employment Contract have yet to be resolved, Sole Source cannot be the "successful" or prevailing party for

purposes of the Motion for Partial Summary Judgment. Although the claims alleged in Sole Source's Amended Complaint have yet to be resolved, those claims were not the basis for Sole Source's Motion. Instead, the Motion for Partial Summary Judgment sought dismissal of claims in Stewart's Counterclaim and Third-Party Complaint against Sole Source, Junowich, Morris, and Stitt. The trial court agreed with Sole Source and dismissed those claims, and specifically concluded Sole Source was the successful party and Stewart was the unsuccessful party. (R. 714.). An award of attorney fees pursuant to the Employment Agreement was therefore justified.

POINT V

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEY FEES TO SOLE SOURCE PURSUANT TO THE DISCOVERY MOTIONS.

A trial court must, after granting a motion to compel, award attorney fees to the moving party "unless the court finds that the opposition to the motion was substantially justified" or if imposing the award would be unjust. Utah R. Civ. P. 37(a)(4). Rule 37 also imposes an award of attorney fees to a party who successfully defends against a motion to compel not "substantially justified." *Id.*

Although the Rule states that attorney fees "shall" be awarded to the prevailing party, the trial court has discretion, upon finding that the motion or defense was substantially justified, to refuse to make such an award. *See Garrand v. Garrand*, 581 P.2d 1012, 1014

(Utah 1978). Nevertheless, the Rule's language does more than give the court discretion in awarding attorney fees. It also creates a presumption that an attorney fee award is appropriate in order to encourage trial courts to impose the sanction.

"Whether a discovery motion is 'substantially justified' depends on the particular facts of each case." *Hutchinson v. Pfeil*, No. 98-5043, 1999 WL 1015557 (10th Cir. (Okla.) Nov. 9, 1999) (unpublished opinion). The facts of this case support the trial court's decision to award attorney fees to Sole Source for its Motion to Compel and for defending against Stewart's Motion to Compel.

A. Sole Source's Motion to Compel

Although Sole Source and Stewart reached an agreement that Stewart would produce a customer list for the purpose of determining common customers, the two parties never agreed upon production of Prologic's financial information. In fact, the customer list was only a small portion of the documents Sole Source requested. Sole Source also asked for the following:

> (1) Prologic's financial documents, including copies of any employment agreement reflecting gainful work by Stewart as an employee or independent contractor other than with Sole Source since January 1, 1994
>
> (2) Banking and accounting records and financial statements of Prologic, Inc.
>
> (3) Tax returns, W-2 forms, and 1099 forms for Prologic and any other entity owned by Stewart since 1990

(4) Copies of job files for customers of Prologic or Stewart "from the formation of Prologic on January 1, 19994, whichever is earlier, through December 31, 1995

(5) Documents relating to work performed by Stewart or Prologic on behalf of the Avery-Dennison Company from November 1, 1994, through the present

(R. 320-21.)

All of these requested documents contained information relevant to Sole Source's claims based on the non-compete agreement. The measure of damages in Sole Source's breach of contract and interference claims was based in part upon the amount of money Stewart and/or Prologic earned in violation of the non-compete agreement. Moreover, the information was also relevant to Stewart's claims for damages as asserted in his Counterclaim and Third-party Complaint.

Documents relating to Stewart's employment since his termination from Sole Source was also discoverable because Stewart had a contractual duty both during his employment at Sole Source and for six months after his termination not to own or conduct business in competition with Sole Source. Thus, Sole Source was entitled to know of any other sources of gainful work in which Stewart was engaged during those e time periods.

The trial court was correct to award attorney fees to Sole Source. Both parties had resolved a small portion of the discovery dispute, but Stewart still refused to produce a large portion of the requested documents, even though it was plain that Sole Source's

requests for these documents was "reasonably calculated to lead to the discovery of admissible evidence." Utah R. Civ. P. 26(b)(1). An attorney fee award was not an abuse of discretion.

B. Stewart's Motion to Compel

Stewart argues that his motion to compel production of Sole Source documents was substantially justified because his status as a shareholder was unclear at the time he made his requests. Stewart's argument misses the mark, however, because his requests for documents from Sole Source were made "in an effort to determine, among other things, what the *value* of the company was and where the assets of the company were transferred after his termination." (Brief of Appellant, p. 45 (citing R. 146-58) (emphasis added)).

Essentially, Stewart sought to discover information relating to the "agreed value" of his shares, not to his status as a shareholder. In fact, Stewart himself acknowledged that his employment had been terminated, resulting in the exercise of the repurchase option under the Shareholders Agreement. Absent clear status as a shareholder of Sole Source, Stewart had no basis to pursue discovery relating to time periods after December 31, 1994, because he "had ceased to be a shareholder at the time the action was commenced." T. Bjur & K. Elkins, *Fletcher Encyclopedia of the Law of Private Corporations*, § 1286 (1993).[3]

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[3]Sole Source had already provided responsive documents through the end of 1994; therefore, Stewart had enough relevant information to make his own independent analysis of the share value, if necessary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two (2) copies of **BRIEF OF APPELLEES** was mailed, first-class, postage prepaid, on this 21 day of July, 2000, to the following:

Jeffrey L. Silvestrini
Brian F. Roberts
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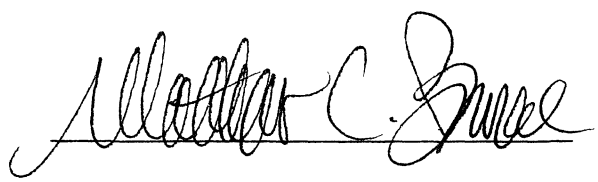

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CONCLUSION

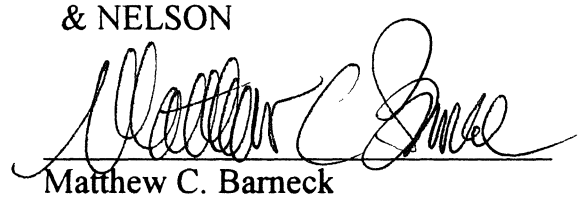
For the foregoing reasons, this Court should affirm the trial court's decisions relating to Sole Source's Motion for Partial Summary Judgment and both parties' motions to compel discovery. Partial summary judgment was appropriate because the undisputed facts show Stewart breached his Employment Contract with Sole Source. Sole Source then properly exercised its option to repurchase Stewart's shares in the corporation at the agreed value of one dollar per share.

Once Stewart was terminated as an employee and the repurchase option was properly exercised, his shareholder status ceased. Stewart therefore had no standing to seek discovery of documents or information relating to the corporation's financial condition after December 31, 1994. Stewart also had no substantial justification for defending against Sole Source's Motion to Compel discovery of information that was reasonably calculated to lead to admissible evidence. The information Sole Source sought was directly related not only to Sole Source's claims but also to those Stewart alleged in his counterclaim. The trial court was thus within its discretion to award attorney fees to Sole Source and did so based on a detailed allocation of fees and in consideration of established standards. For the same reasons, Appellees are entitled to an additional award of attorney fees if their defense of this appeal is successful.

Sole Source respectfully requests that this Court affirm the trial court's rulings in this matter.

DATED this 21 day of July, 2000.

RICHARDS, BRANDT, MILLER
& NELSON



Matthew C. Barneck
Attorneys for Appellees

ADDENDA

ADDENDUM "A"

ANSWER TO AMENDED COMPLAINT, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT
Dated April 16, 1996

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

----ooo0ooo----

SOLE SOURCE MEDIA, INC., a Utah corporation, Plaintiff and Counterclaim Defendant,	**ANSWER TO AMENDED COMPLAINT, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT**
v.	
PROLOGIC, a Utah partnership, Defendant and BRAD STEWART Defendant, Counter-claimant and Third-Party Plaintiff,	Civil No. 950907433 Judge Glen Iwasaki
v.	
DONALD JUNOWICH, WILLIAM MORRIS, and KEVIN STITT, Third-Party Defendants.	

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Defendant Prologic, a Utah partnership, and Defendant, Counterclaimant and Third-Party Plaintiff Brad Stewart ("Stewart"), through their undersigned counsel, answer the Amended Complaint of Plaintiff as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state claims against Defendants upon which relief may be granted.

SECOND DEFENSE

Responding to the specific allegations of the Amended Complaint ("Complaint"), Defendants asserts as follows:

1. Defendants admit the allegations contained in paragraph 1 of the Complaint.

2. Defendants deny the allegations contained in paragraphs 12, 13, 14, 15, 17, 18, 19, 21 and 22 of the Complaint.

3. In response to paragraph 2 of the Complaint, Defendants admit that Prologic is a Utah partnership doing business in Salt Lake County, State of Utah and admit that Prologic employed Defendant Stewart during November 1994, following the purported termination of Stewart as an employee of Plaintiff.

4. In response to paragraph 3 of the Complaint, Defendants admit that Stewart executed an Employment Contract with Plaintiff dated December 1, 1993, but deny that a copy of the Employment Contract was attached to the Complaint served upon Defendants.

5. In response to paragraph 4 of the Complaint, Defendants affirmatively assert that the Employment Contract speaks for itself and is the best evidence of its content. Defendants admit the allegations contained in paragraph 4 insofar as they are consistent with the provisions of the Employment Contract.

6. In response to paragraph 5 of the Complaint, Defendants assert that the Employment Contract speaks for itself and is the best evidence of its content. Defendants admit the allegations contained in paragraph 5 insofar as they are consistent with the Employment Contract.

7. In response to paragraph 6 of the Complaint, Defendants assert that the Employment Contract speaks for itself and is the best evidence of its content. Defendants admit the allegations contained in paragraph 6 insofar as they are consistent with the Employment Contract.

8. In response to paragraph 7 of the Complaint, Defendants assert that the Employment Contract speaks for itself and is the best evidence of its content. Defendants admit the allegations contained in paragraph 7 insofar as they are consistent with the Employment Contract.

9. In response to paragraph 8 of the Complaint, Defendants deny that Stewart provided any notice prior to the time Stewart's employment with Plaintiff was purportedly terminated. Further, on or about November 4, 1994, the only business Stewart contemplated assuming in competition with Sole Source was the Avery contract, which Sole Source repudiated during the course of meetings on November 4, 1994 and prior to the time Stewart indicated his interest in individually pursuing the Avery contract. Defendants otherwise deny the allegations contained in paragraph 8 of the Complaint.

10. In response to paragraph 9 of the Complaint, Defendants deny that any formal meeting of shareholders of Plaintiff was held on November 4, 1994, but admit that three of the four shareholders were present for discussions and the fourth shareholder participated for a time by telephone. Defendants deny that the grounds for termination discussed in the meeting on November 4, 1994 were Sections 6, 7, 8 or 9 of the Employment Contract. Defendants admit that Sole Source provided Stewart with a waiver allowing him to establish a company to pursue business from Sole

Source's customer, Avery. Defendants deny each and every other allegation contained in paragraph 9 not expressly admitted herein.

11. In response to paragraph 10 of the Complaint, Defendants deny that they have committed any acts in breach of the Employment Contract and deny that they have solicited or accepted business from any Sole Source customers except those as to which express waivers were provided, including Avery and Bonneville Communications. Defendants deny each and every other allegation of paragraph 10 except as expressly admitted herein.

12. In response to paragraphs 11, 16 and 20 of the Complaint, Defendants reincorporate by reference their responses to the paragraphs Plaintiffs have realleged therein.

13. Defendants deny each and every other allegation contained in the Complaint not expressly admitted herein.

THIRD DEFENSE

The claims of Plaintiff are barred under the doctrine of waiver.

FOURTH DEFENSE

The claims of Plaintiff are barred under the doctrine of estoppel.

FIFTH DEFENSE

The claims of Plaintiff are barred under the doctrine of unclean hands.

SIXTH DEFENSE

The claims of Plaintiff are barred under the doctrine of release.

SEVENTH DEFENSE

The claims of Plaintiff have not been asserted in good faith and are without merit and Defendants are entitled to an award of their reasonable attorney's fees and costs incurred in defending Plaintiff's Complaint pursuant to the provisions of §78-27-56, U.C.A., 1953.

EIGHTH DEFENSE

Defendant is entitled to an offset or set off against any amounts owed to Plaintiff by virtue of the claims plead in Defendant's Counterclaim which is here incorporated by this reference.

NINTH DEFENSE

As a further and additional affirmative defense, Defendant affirmatively asserts the matters asserted in the Counterclaim and Third-party Complaint which is here incorporated by this reference.

WHEREFORE, Defendants pray judgment against Plaintiff on its Complaint as follows:

1. That Plaintiff take nothing by way of its Complaint and that the same be dismissed with prejudice.

2. For costs of this action.

3. For reasonable attorney's fees.

4. For such other and further relief as the Court deems proper.

COUNTERCLAIM AND THIRD-PARTY COMPLAINT

For his Counterclaim against Sole Source Media, Inc. ("Sole Source") and Third-Party Complaint against Third-Party Defendants Donald Junowich, William Morris and Kevin Stitt, Counterclaimant and Third-Party Plaintiff Brad Stewart, alleges as follows:

1. Sole Source is a Utah corporation in the business of graphics management. Sole Source provides its customers a turn-key program of printing and graphic-related services.

2. Defendant Donald Junowich ("Junowich") was at all relative times president, shareholder and director of Sole Source and a resident of the State of California. Defendant Junowich has engaged in substantial contacts with the State of Utah such that jurisdiction is appropriate over his person pursuant to the provisions of the Utah Long Arm Statute, §78-27-22 et seq, U.C.A. 1953, or otherwise. Specifically, Junowich has transacted business with the State of Utah, has caused injury in this state by tortious behavior as more particularly alleged herein and has served as the president and director of Sole Source, a Utah corporation doing business in Utah. Junowich originally filed this action as a party Plaintiff in the original Complaint filed herein dated October 24, 1995 and thereby has invoked the benefits and protections of the State of Utah.

3. Third-Party Defendant William Morris ("Morris") is a resident of the State of Utah and at relevant times was an officer, shareholder and director of Plaintiff Sole Source.

4. Third-Party Defendant Kevin Stitt ("Stitt") is a resident of the State of Utah and at relevant times was an officer, shareholder and director of Plaintiff Sole Source.

5. Sole Source was an enterprise founded in August 1992 by Brad Stewart, originally as a sole proprietorship. Stewart established Sole Source to serve its customers by

subcontracting printing services and project management to a network of printing vendors and suppliers.

6. Stewart operated the company himself until January 1993, when Junowich joined the company. Stewart and Junowich had met while employed at ProLitho, a printing company in Provo, Utah.

7. In January 1993, Sole Source was changed to a joint venture between Stewart and Junowich. Also in January 1993, Morris was hired to provide office management and customer service.

8. In April 1993, Sole Source, a joint venture, hired Stitt to facilitate business expansion of the company.

9. At the time Sole Source became a joint venture between Stewart and Junowich, Stewart and Junowich each contributed an amount of $10,000 as capital. Sole Source was operated as a joint venture until on or about July 1, 1993, at which time the company was incorporated in Utah.

10. When Sole Source was incorporated, 33% of the outstanding shares were issued to Stewart, 33% of the outstanding shares were issued to Junowich, 17% of the outstanding shares were issued to Morris and 17% of the outstanding shares were issued to Stitt. Morris and Stitt each invested $5,000 in order to purchase their stock in Sole Source. The $10,000 which they used to purchase their shares was loaned to them by Stewart. Morris and Stitt have repaid Stewart in full for the monies borrowed to purchase stock in Sole Source.

11. When Sole Source was formed, the shareholders agreed to distribute the profits of the corporation on a quarterly basis as part of the compensation to the shareholders, who were also all employees of the corporation.

12. Sole Source paid all of its quarterly distributions to shareholders through the first quarter of 1994.

13. Sole Source earned substantial second quarter revenues as the result of two large projects produced in May and June 1994. One of the large projects was produced for R.R. Donnelley ("Donnelley"). Sole Source was selected by Donnelley as a subcontractor to produce a product that was one of several components of an office products line called "Communique'". This product is owned by Avery-Dennison ("Avery") and marketed nationwide.

14. Avery had selected Donnelley to handle the project management of Communique'. This selection was mainly due to the sales efforts of Alane Anderson ("Anderson") a Donnelley sales person assigned to the Avery account. Anderson serviced the Avery account for over three years and had been successful in establishing relationships with the key management and purchasing personnel at Avery.

15. The Communique' project was forecast to generate in excess of $10 million dollars in annual sales. As a Donnelley representative, Anderson was intricately involved in the conception and development of the Communique' project within the Avery organization.

16. Sole Source was selected by Donnelley as a subcontractor through a connection between Anderson and Junowich. Anderson was assigned to take over select accounts upon Junowich's resignation from Donnelley in January 1993. Anderson contacted Sole Source to participate as a subcontractor to Donnelley in the production of one component for Communique'.

17. The overall project management by Donnelley for Avery was problematic. Donnelley contracted out most of the print manufacturing, and despite efforts by Anderson, the job delivered significantly late to Avery. However, Sole Source was, upon information, the only subcontractor that delivered on time and within quality standards.

18. Due to the poor performance on behalf by Donnelley, it was Avery's decision to solicit proposals from other vendors regarding the project management of Communique'. At this time, Sole Source made an offer of employment to Anderson, contingent upon the award of the project from Avery.

19. Sole Source was awarded the project from Avery in late August 1994 and Anderson joined Sole Source as an employee immediately thereafter to represent Sole Source in the coordination and servicing of the Avery account.

20. As a result of the late delivery of the product to Avery before Sole Source was awarded the project, the sales and marketing momentum of the Communique' project diminished. The forecast given to Sole Source by Avery was extended several times beyond the original schedule.

21. In late October 1994, Junowich met with the Sole Source shareholders and announced that Anderson had received information from Avery that the project would be further delayed and potentially downsized. Junowich also represented to the shareholders of Sole Source that Anderson had given her notice of resignation as an employee of Sole Source, due to the wavering commitment from Avery.

22. Unknown to the shareholders of Sole Source at the time, Junowich had denied a request by Anderson to come to Salt Lake City to participate in discussions regarding the status of the Avery account.

23. At the same meeting of Sole Source shareholders in late October 1994, Junowich called for a vote to lay off Anderson and another Sole Source employee, Tony Dato ("Dato"), the general manager and lead coordinator of the Avery project.

24. At the same meeting, Junowich proposed that Sole Source resign from the Avery Communique' project.

25. In this meeting, Stewart voiced reservation about laying off Anderson and Dato without additional information from Anderson regarding the status of the Avery account. Stewart proposed that Dato continue on staff for such time until Sole Source could accurately determine the future prospects of a continuing relationship with Avery on the Communique' project. Stewart expressed his concern that, especially if Anderson were to resign her employment at Sole Source, it was essential to keep part of the Avery project team intact in order to continue the relationship and maintain the account with Avery. At no time did Stewart vote to terminate or lay off Anderson. To the contrary, Junowich told the Sole Source directors that Anderson had resigned her employment. Stewart objected to the course of action proposed by Junowich, particularly resigning the Avery account, at least until further information cold be obtained. Stewart stated that if Sole Source did resign the Avery project, he might be interested in pursuing it individually.

26. At this meeting, the other shareholders, Morris and Stitt, agreed with Stewart to retain Dato as an employee of Sole Source until further information could be obtained regarding

new developments with Anderson and Avery. However, on the following day, Morris and Stitt changed their position and Dato was terminated on Friday, October 28, 1994.

27. Also on Friday, October 28, 1994, Anderson attempted to contact Sole Source from California. Upon information and belief, Junowich declined to take any calls from Anderson.

28. Stewart attempted to call Anderson over the weekend of October 29-30, 1994 and finally communicated with her by telephone on Monday, October 31, 1994. At that time, Anderson advised Stewart that Junowich had met with her in California on Sunday, October 30, 1994 and advised her that the shareholders of Sole Source had voted to terminate her employment effective immediately. In further discussions, Anderson denied that she had submitted her resignation and denied that she had ever made any reference to Junowich about leaving the employment of Sole Source. She indicated surprise that Sole Source was considering resigning from the Avery account and surprise about the lay offs of herself and Dato. She said Junowich represented to her that Stewart would be attempting to take over the Avery account and that Stewart had voted to terminate Anderson.

29. Also on Monday, October 31, 1994, Stewart initiated a telephone conference call between Morris, Stitt, Stewart and Anderson in Salt Lake City. Anderson related her recent discussions with Avery and indicated that she had never told Junowich that she intended to resign her employment at Sole Source.

30. From October 31 to November 4, 1994, Stewart contacted Avery and attempted to obtain additional information about project developments. Representatives of Avery

indicated reluctance to deal with Sole Source given the developments, including the termination of Anderson and Dato.

31. Upon information and belief, Avery was disappointed to learn that Sole Source had terminated Anderson and was concerned about the position Sole Source had taken respecting not continuing with the Communique' project.

32. During the period from October 31 through November 4, 1994, Stewart consulted with Morris and Stitt and expressed his concern about losing the Avery account and losing employees Anderson and Dato. Stewart advised Morris and Stitt that he was interested in retaining the Avery account, and if Sole Source could not or would not do so, he was interested in finding another method by which the account could be salvaged.

33. On November 4, 1994, in an informal meeting between Stewart, Stitt and Morris, Junowich was joined to the conference by telephone. During the course of the conference, Junowich, Morris and Stitt, voted to terminate Stewart's employment. Stewart opposed this action. Stewart was advised that if he wanted to pursue the Avery account independently or through a new venture, that he would be free to do so and that none of the shareholders of Sole Source, or Sole Source itself, would view such action to be in violation of any shareholder agreement, employment agreement or other restrictive covenant or that Sole Source would waive any such covenant.

34. After his employment with Sole Source was purportedly terminated, Stewart advised Morris, Stitt and Sole Source that, under these circumstances, he intended to form a new venture and pursue the Avery business.

35. By a letter to its employees dated November 4, 1994, signed by Junowich, Morris and Stitt, Sole Source announced the termination of Stewart, Dato and Anderson (aka Abbott.) The letter circulated by Sole Source stated in pertinent part:

> In an effort to support Brad Stewart in pursuing other business opportunities, he is immediately relieved of all Sole Source Media board of directors and management duties and responsibilities. His management salary of $4,000 per month and related expenses are to be terminated effective November 4, 1994. As this change is effective immediately, this will require Brad to return all keys, credit cards, and Sole Source property by 5:00 p.m. Friday, November 4, 1994. All personal items must be removed at that time.

The letter further stated:

> Unfortunately, this "unexpected" turn of events has caused us to evaluate the corporation "under a new light". These decisions have come after much deliberation and we believe they are made with the best interests of all parties in mind. We wish Brad, Tony and Alane continued success in pursuit of their "new" venture.

Stewart did not consent to his termination by Sole Source either as an employee or as a director.

36. Also on November 4, 1994, Sole Source offered Stewart a separation agreement, conveyed to him in a written offer.

37. On November 7, 1994, Sole Source granted a written waiver to Stewart of the non-compete clause which prohibited his solicitation of existing customers of Sole Source as it applied to the Avery-Dennison account. The waiver specifically provided that it was intended to "allow a smooth and cooperative transition of the Avery-Dennison business to the new company, yet unnamed" and provided "the waiver of the non-compete clause with regard to Avery-Dennison account which would allow for Brad Stewart to actively participate in the function and operation of the new company." The document further waived the provision that "prevents any Sole Source

Media, Inc. shareholder from assuming ownership or a shareholder position with any other company."

38. Subsequently, Sole Source, through Morris and Stitt, provided an oral waiver to Stewart and/or his new company (which later became known as Prologic), respecting Prologic's pursuit of the business of another Sole Source account, Bonneville Communications, Inc. ("Bonneville").

39. Consistent with its oral waiver of the Sole Source non-compete clause contained in the agreement Stewart had executed, several weeks after Stewart had moved out of his office at Sole Source, Sole Source delivered its customer and project files from previous Bonneville projects to Stewart and Prologic.

40. The waivers respecting the Avery-Dennison and Bonneville accounts were further memorialized in a proposed settlement agreement proposed by Sole Source, Junowich, Morris and Stitt dated March 15, 1995. That proposal specifically provided:

> The company hereby agrees that Stewart may solicit or otherwise contact the following customers or prospective customers of the company: Bonneville Communications, Josten's Learning Corp., Avery-Dennis (sic). Except for these customers, and as further consideration of the settlement payment, Stewart agrees to abide by the non-compete provisions of Section 8 of the Employment Contract, more specifically that for the entire period of time starting with the date of this agreement and ending October 31, 1995, he will not contact any present or prospective customer of the company of which he knew or had reason to know the existence of at November 4, 1994.

41. By a letter dated December 5, 1994, Stewart was advised that the majority shareholders of Sole Source had voted on November 4, 1994 to terminate Stewart, pursuant to

Section 9(e) of the Employment Contract and Sole Source had resolved to exercise an option to purchase all of Stewart's 330 shares of Sole Source stock one dollar per share or $330.00.

42. In the course of the business of Sole Source, Sole Source sought a credit facility from First Security Bank. Stewart personally guaranteed the credit line which First Security Bank ultimately made available to Sole Source.

43. On information and belief, Third-Party Defendants Junowich, Morris and Stitt agreed and conspired to cause Sole Source to terminate Stewart's employment. Upon information, this action was taken so that Stewart would not be able to investigate fabrications and misrepresentations made by Junowich to Sole Source and its officers, directors and shareholders respecting the Avery account and the alleged resignation of Anderson.

44. Upon information and belief, Third-Party Defendants Junowich, Morris and Stitt agreed and conspired to cause Sole Source to offer only $330 or $1.00 per share for the purchase of Stewart's stock, supposedly pursuant to the Shareholders Agreement between Stewart and Sole Source.

45. The actions of Third-Party Defendants Junowich, Morris and Stitt, and Sole Source breached the Shareholders Agreement by failing to offer to Stewart the compensation bargained for since they only offered Stewart a nominal amount for his stock, which was grossly less than the value of the stock, particularly given that Stewart had invested more than $10,000 in cash and significant efforts which contributed value to Sole Source. Stewart's Sole Source stock was unconscionably undervalued at $1.00 per share given the salary expectations of Stewart, based upon the history of compensation paid to him by the corporation, and given that he had guaranteed a line of credit in favor of Sole Source from First Security Bank.

46. The Shareholders Agreement relied upon by Sole Source and Third-Party Defendants provides in ¶12(a)(ii) as follows:

> In all other cases, including without limitation a proposed transfer or the disposition not constituting a sale described in subsection (a)(i), the Purchase Price shall be the "agreed value" determined in accordance with subsection (b) subject to adjustment by the independent certified public accountant then serving the Corporation to reflect material events and changes in circumstances occurring subsequent to the date on which the agreed value was last fixed.

Subparagraph (b) of paragraph 12 of the Shareholders Agreement provides for the adjustment of the agreed value by the company's then certified public accountant in the event the stockholders in the corporation fail to either reaffirm the value per share or agree upon a new value at the end of any fiscal year.

48. In violation of the Agreement, Sole Source and Junowich, Morris and Stitt ignored this provision of the Shareholders Agreement and made no effort to adjust the amount offered for Stewart's shares to reflect material events and factors which increased the value of Stewart's shares.

49. Stewart's compensation from Sole Source was governed by his Employment Agreement which provided for an annual salary of $60,000.00 (Employment Agreement, ¶3(a)) and additional compensation consisting of quarterly distributions of net profits of Sole Source in accordance with the Shareholders Agreement. (Employment Contract, ¶3(b)).

50. Paragraph 3 of the Shareholders Agreement provided for the percentage distribution of profits of the corporation to shareholders. Pursuant to that agreement, Stewart was entitled to receive a distribution of 31% of the profits of the corporation. (Shareholders Agreement, ¶3).

51. Pursuant to the Shareholders Agreement, directors of the corporation could not be removed and new directors could not be elected without the unanimous vote of the shareholders of the corporation. (Shareholders Agreement, ¶4). There was never a unanimous vote of the shareholders of Sole Source to remove Stewart as a director of the corporation.

52. Pursuant to the provisions of the Shareholders Agreement, Stewart was vice president of the corporation. Under the Shareholders Agreement, Stewart could not be removed by the board of directors and new officers could not be elected or appointed absent the unanimous vote of the board of directors and the shareholders of the corporation. No such unanimous vote of the directors of the corporation or its shareholders provided for either the removal of Stewart or his replacement as vice president of the corporation.

53. The actions of the Third-Party Defendants including Junowich, Morris and Stitt, to terminate Stewart's employment as an officer of the corporation and to remove him as a director of the corporation were expressly prohibited by the terms of the Shareholders Agreement between Stewart, Sole Source and Third-Party Defendants.

54. Third-Party Defendants Junowich, Morris and Stitt signed the Shareholder Agreement signed by Stewart. Thus they knew that directors of the corporation and officers of the corporation could not be removed or replaced without the unanimous vote of all directors and all shareholders of the corporation, including Stewart. They were also aware of Stewart's Employment Contract with Sole Source.

55. Following November 4, 1994, Sole Source, Junowich, Morris and Stitt undertook actions to prevent Stewart from acting as an officer, director and shareholder of the corporation including but not limited to the following:

a. They failed to provide Stewart with notice of meetings of shareholders, directors or officers of the corporation;

b. They required Stewart to surrender his keys to the Sole Source offices and declined to let him continue in his employment at those premises;

c. They withheld from Stewart financial information relating to the corporation, including information which demonstrated that the corporation withheld from Stewart quarterly bonuses which were in fact paid to other employees, officers and shareholders of the corporation. Upon information, such bonuses were withheld from Stewart even for periods when Stewart was, at all times, employed at Sole Source;

d. Further, while indicating that the corporation lacked funds to pay Stewart the monies owed to him for his quarterly bonus, Junowich, Morris and Stitt caused the corporation to increase their own salaries. Since the time that action was taken, the corporation has, upon information and belief, paid Junowich, Morris and Stitt at elevated compensation levels.

56. The meeting on November 4, 1994 was an informal meeting and no notice of the meeting or of any agenda or the meeting was provided to Stewart in advance thereof. In spite of this, Junowich, Morris and Stitt apparently knew the agenda as the memo to Sole Source employees and a separation agreement were presented to Stewart on the same day the meting occurred.

57. No written notice of shareholder approval of the termination of Stewart was given to Stewart as a shareholder of Sole Source. Stewart did not consent in writing to a shareholders meeting. Nevertheless, the reported action taken by the corporation upon a vote of the majority of the shareholders on November 4, 1994 was implemented immediately.

58. Defendants Sole Source, Junowich, Morris and Stitt have shut Stewart out from the operations of Sole Source. Defendants Junowich, Morris and Stitt have wrongfully seized control of the company and have ignored and are ignoring corporate formalities for their own wrongful, illegal and fraudulent purposes, including but not limited to the conspiratorial actions to deprive Stewart of his equity interest in the company and his employment. Because of the growth of the company and the peculiar nature of the agreements between the parties, Counter-Claim Defendant and Third-Party Defendants determined to breach their fiduciary duties to Stewart and they attempted to use the agreements signed between the parties to deprive Stewart of his employment as well as the fruits and benefits of his labor and related investment.

59. Because Defendant Junowich, Morris and Stitt have wrongfully seized control of Sole Source and have oppressed Stewart and his rights as a minority shareholder, the corporation should be dissolved pursuant to the provisions of the Utah Business Corporation Act, §16-10a-1 et seq, U.C.A. 1953 as amended.

60. Alternatively, Stewart should be awarded the damages he has incurred as a result of the wrongful usurpation by Junowich, Morris and Stitt.

FIRST CLAIM FOR RELIEF

(DECLARATORY RELIEF)

61. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

62. A legitimate controversy exists between Stewart and Sole Source, Junowich, Morris and Stitt respecting Stewart's status as an employee of Sole Source, as a shareholder of Sole Source, and as an officer and director of Sole Source.

63. Pursuant ot the provisions of §78-33-1 et seq, U.C.A. 1953 as amended, Stewart is entitled to a declaratory judgment interpreting his statutory rights as a shareholder of Sole Source and his contractual rights as an officer, director, shareholder and employee of Sole Source. Stewart is further entitled to a declaratory judgment determining that Sole Source and/or Junowich, Morris and Stitt have taken actions unauthorized by the shareholders or directors of Sole Source and Stewart is entitled to a declaration that Stewart's employment was wrongfully terminated. Stewart is further entitled to a declaration of the Court determining that he is entitled to be compensated for the reasonable value of his interest in Sole Source pursuant to the Shareholders Agreement and in equity, such that Stewart is entitled to be paid more than $1.00 per share for his 330 shares of Sole Source stock.

SECOND CLAIM FOR RELIEF

(DISSOLUTION FOR OPPRESSION OF MINORITY SHAREHOLDER RIGHTS)

64. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

65. Defendants Junowich, Morris and Stitt and each of them are directors or are otherwise in control of Sole Source.

66. The actions of Junowich, Morris and Stitt in purporting to terminate Stewart's employment, in purporting to require Stewart to sell his shares in the corporation without fair consideration and in purporting to remove Stewart as an officer and director of Sole Source are illegal, oppressive and fraudulent.

67. Pursuant to the provisions of §16-10a-1430, Stewart prays that this Court judicially dissolve Sole Source and that incident thereto, this Court appoint a receiver for Sole Source pursuant to the provisions of §16-10a-1432 or otherwise pursuant to this Court's equitable powers.

68. Stewart is entitled to damages from Sole Source, Junowich, Morris and Stitt and each of them by virtue of their oppression of his minority shareholder rights in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF

(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS AND ECONOMIC EXPECTANCIES)

69. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

70. In purporting to have Sole Source terminate Stewart's employment and to require Stewart to surrender his shares of stock, Third-Party Defendants Junowich, Morris and Stitt have interfered with known contractual relationships between Stewart and Sole Source and/or have

interfered with economic expectancies of Stewart related to his continued employment and his investment potential with Sole Source.

71. Specifically, Junowich, induced the other shareholders and directors of Sole Source to undertake these actions based upon misrepresentations that Anderson had resigned her position with Sole Source.

72. The interference of Third-Party Defendants Junowich, Morris and Stitt also occurred when they purported to have the corporation terminate Stewart and to require Stewart to surrender his shares of stock in Sole Source.

73. The interference by Junowich, Morris and Stitt alleged above was wrongful against Stewart and committed by improper means or for an improper purpose.

74. Stewart has been damaged by the conduct of Third-Party Defendants in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)

75. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

76. Inherent in all contracts under Utah law is an implied covenant of good faith and fair dealing.

77. The Shareholders Agreement and the Employment Agreement executed by Stewart contain such implied covenants.

78. Sole Source and/or Third-party Defendants Junowich, Morris and Stitt breached their covenants of good faith and fair dealing in purporting to cause Stewart's termination from employment with Sole Source and in purporting to require Stewart to sell his stock to Sole Source for an unreasonably inadequate sum.

79. Stewart has been damaged by virtue of the breach of the covenant of good faith and fair dealing by Sole Source and/or Third-Party Defendants Junowich, Morris and Stitt.

FIFTH CLAIM FOR RELIEF

(BREACH OF FIDUCIARY DUTY)

80. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

81. As directors and controlling shareholders of Sole Source, Third-Party Defendants Junowich, Morris and Stitt owed Stewart, as a minority shareholder, a fiduciary duty.

82. Defendants Junowich, Morris and Stitt breached their fiduciary duty owed to Stewart by, among other things, not observing appropriate corporate formalities in purporting to direct Sole Source to terminate Stewart's employment; by requiring Stewart to sell his shares in Sole Source for an inadequate price; by violating Stewart's minority shareholder rights; and by having Sole Source terminate Stewart's employment when to do so was not in the interest of the corporation.

SIXTH CLAIM FOR RELIEF

(ACCOUNTING AND JUDGMENT)

83. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

84. Pursuant to his Employment Agreement and Shareholders Agreement with the corporation and/or Third-Party Defendants Junowich, Morris and Stitt, Stewart was entitled to be paid his draw plus quarterly distributions of corporate profits of Sole Source.

85. Sole Source and Third-Party Defendants and each of them, have failed and refused to account to Stewart for the amount of the profits and have failed and refused to pay to Stewart the profits even for the period during which Stewart was actively employed by the corporation and actually worked for Sole Source.

86. Stewart is entitled to an accounting from Sole Source and Third-Party Defendants and each of them respecting the revenues and expenses of Sole Source, the calculation of its profits, payments made to other shareholders and directors of Sole Source including the amounts of salary increases given to Junowich, Morris and Stitt after Stewart was terminated and the amount of compensation owed to Stewart.

87. Stewart is further entitled to a judgment against Sole Source for any amounts due and owing to him as the result of such accounting.

SEVENTH CLAIM FOR RELIEF

(PUNITIVE DAMAGES)

88. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

89. The actions of Sole Source and Third-Party Defendants Junowich, Morris and Stitt were intentional, wilful and malicious as regards Stewart and Stewart is entitled to an award of punitive damages to deter Sole Source, Junowich, Morris and Stitt from future similar conduct.

EIGHTH CLAIM FOR RELIEF

(BREACH OF CONTRACT)

90. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

91. Sole Source, by refusing to pay Stewart the compensation to which he was entitled pursuant to the Employment Contract and the Shareholders Agreement, including but not limited to compensation which Stewart earned during the time which he was employed by Sole Source, has breached its agreements with Stewart and is liable to Stewart for all damages incurred by virtue of its failure to pay wages, salaries and bonuses to Stewart as provided in those agreements and according to the practices of Sole Source.

92. Stewart is entitled to an accounting from Sole Source to determine the amounts owed to him and to a judgment for any amounts found to be due and owing.

93. Sole Source, Junowich, Morris and Stitt also breached the Shareholders Agreement by firing Stewart and forcing Stewart to sell or redeem his shares for grossly inadequate consideration.

NINTH CLAIM FOR RELIEF

(INDEMNIFICATION)

94. Stewart herein incorporates all previous allegations of this Counterclaim and Third-Party Complaint as if set forth here at length.

95. Incident to his employment by Sole Source and his status as a shareholder, officer and director of that corporation, Stewart guaranteed a credit facility extended by First Security Bank of Utah to Sole Source.

96. Upon information and belief, the line of credit to Sole Source from First Security Bank of Utah, guaranteed by Stewart, is still outstanding and a balance is owed.

97. Stewart is entitled to an order requiring Sole Source to indemnify him against any liability on his guarantee of payment of the line of credit facility.

98. In the alternative, Sole Source should be required to obtain a release of any liability of Stewart to First Security Bank of Utah relating to the line of credit facility extended to Sole Source.

WHEREFORE, Stewart prays judgment against Sole Source, Junowich, Morris and Stitt as follows:

1. For declaratory relief as more particularly alleged herein.

2. For an accounting from Sole Source and Third-Party Defendants respecting compensation owed tro Stewart and respecting the value of Sole Source for the purpose of determining a value to be paid for Stewart's shares in the corporation.

3. For such actual damages as are proven at trial based upon the accounting requested herein and other claims.

4. For punitive damages as proven at trial.

5. For reasonable attorney's fees to be awarded pursuant to the agreements between the parties.

6. For such other and further relief as the Court deems proper in the premises.

DATED this 16th day of April 1996.

COHNE, RAPPAPORT & SEGAL, P.C.

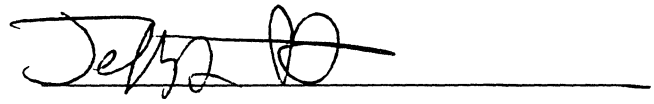
JEFFREY L. SILVESTRINI
Attorneys for Brad Stewart and Pro Logic, a Utah Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a member of and/or employed in the law firm of **COHNE, RAPPAPORT & SEGAL, P.C.,** 525 East First South, Suite 500, P.O. Box 11008, Salt Lake City, Utah 84147-0008, and that in said capacity, I caused a true and correct copy of the foregoing to be mailed to the person(s) named below:

Russell C. Fericks, Esq.
Gary Johnson, Esq.
Matthew C. Barneck, Esq.
RICHARDS, BRANDT, MILLER & NELSON
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, UT 84110-2465

on the 16th day of April 1996.



ADDENDUM "B"

EMPLOYMENT CONTRACT
Dated December 1, 1993

EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT (the "Contract") is made and entered into this first day of December, 1993, by and between Brad Stewart (hereinafter "Employee") and Sole Source Media, Inc., a Utah corporation, (hereinafter "Employer").

WITNESSETH:

WHEREAS, Employer is engaged in the business of print management.

WHEREAS, Employee has been engaged and has had a great deal of experience in the above-designated business; and

WHEREAS, the Employee is willing to be employed by Employer, and Employer is willing to employ the Employee on the terms, covenants and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, it is agreed as follows:

1. EMPLOYMENT.

Employer hereby employs, engages and hires Employee to render such services and duties in connection with Employer's business as may be assigned to the Employee by Employer from time to time, and the Employee hereby accepts and agrees to such hiring, engagement and employment.

2. TERMS OF EMPLOYMENT.

The term of this agreement shall be for the period commencing on or about December 1, 1993, and terminating on or about June 30, 1996, subject, however, to prior termination as hereinafter

provided. Continued employment of the Employee by Employer after December 1, 1996, shall be for the term and on the conditions agreed to by the parties prior to the expiration of this agreement.

3. COMPENSATION OF EMPLOYEE.

a. Annual Compensation. Subject to increases under paragraph c, Employer shall pay the Employee an annual salary of $60,000.00. Such annual salary shall be paid as follows: $2,500.00 on the first (1st) of each month and $2,500.00 on the fifteenth (15th) of each month.

b. Additional Compensation. As additional compensation, and in consideration of Employee's promise set forth in section 7, herein, Employer agrees to compensate Employee as follows: Quarterly distributions of net profits in accordance to the Shareholder's Agreement of Sole Source Media, Inc., executed on or about December 1, 1993.

c. Increases in Compensation. The annual salary of the Employee shall be increased, and the Employee shall be entitled to such bonuses, as may be determined from time to time in the sole discretion of the Employer.

d. Reduction for Taxes. Employer shall have the right to deduct from the compensation payable to the Employee under the provisions of this agreement, social security taxes, and all federal, state and municipal taxes and charges as may now be in effect or which may hereafter be enacted or required as charges on the compensation of the Employee.

4. BEST EFFORTS OF EMPLOYEE.

The Employee agrees that he will at all times faithfully, industriously and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms hereof, to the reasonable satisfaction of the Employer. Such duties shall be rendered at and all places as Employer shall in good faith require or as the interest, needs, business of opportunity of Employer shall require.

5. OTHER EMPLOYMENT.

Employee shall devote all of his time, attention, knowledge, and skills solely to the business and interest of Employer, and Employer shall be entitled to all of the benefits, profits or other issues arising from or incident to all work, services and advice of Employee, and Employee shall not, during the term hereof, be interested directly or indirectly, in any manner, partner, officer, stockholder, advisor, employee or in any other capacity in any other business of the type an character of business engaged in by Employer, or any allied trade; provided, however, that nothing herein contained shall be deemed to prevent or limit the right of Employee to invest any of his surplus funds in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything herein contained by deemed to prevent Employee from investing or limit the Employee's right to invest his surplus funds in real estate.

6. TRADE SECRETS.

Except as required by law or in his duties to Employer, Employee will not, either during the period of his employment by Employer or at any time thereafter, except as authorized or directed in writing by Employer, directly or indirectly, use, disseminate, disclose, copy, make notes of, lecture upon or publish articles concerning, any confidential information of Employer for any reason or purpose whatsoever. Upon termination of his employment with Employer for any reason, all records, documents, notes, data, memoranda, models, equipment or similar matter which constitute, contain or relate to any confidential information then in the Employee's possession, custody or control, whether prepared in whole or in part by him or others, will be left with Employer. For purposes of this provision, the term "confidential information" means trade secrets or any other information disclosed to Employee or known to Employee as a consequence of or through his employment by Employer which is not public knowledge, including, but not limited to, information relating to research, development, inventions, manufacture, purchasing, accounting, engineering, marketing, merchandising and selling. The parties hereby stipulate and agree that violation or breach of the terms of this paragraph shall be a material breach of this agreement.

7. COVENANT NOT TO COMPETE AFTER TERMINATION.

In furtherance of protecting Employer's interest in confidential information as set forth in section 6, and in consideration of the additional compensation to be paid as provided

in section 3, paragraph b, the parties hereby stipulate and agree that for a period of six (6) months from the date of the termination of the Employee's employment with Employer, whether voluntary or involuntary and for whatever reason, Employee will not, unless first obtaining Employer's waiver of these provisions:

a. Ownership or Management. Directly or indirectly, in any manner, as partner, office, stockholder, advisor or in any other capacity, own, manage, operation or control, or participate in the ownership, management or control, of any business of the type and character of business engaged in by Employer at the time of termination of Employee's employment, or any allied trade; or

b. Employment. Be employed in any business of the type and character of business engaged in by Employer at the time of termination of Employee's employment, or any allied trade, in any capacity in which Employee could utilize confidential information, as defined for purposes, of paragraph 6, to the detriment of Employer's business.

The provisions of this paragraph shall apply only to prohibited activities of Employee conducted relative to those geographical areas in the states to be determined by the Board of Directors wherein Employer is marketing, selling, distributing or furnishing products or services at the time of termination of Employee's employment with Employer, and the additional geographic area in those states wherein Employer could reasonably be expected, at the time of termination of Employee's employment with Employer, to

market, sell, distribute or furnish products or services of expansion of its business activities, such additional geographic area to be identified to the Employee by Employer in writing within 90 days following the Employee's termination of employment with Employer. The provision of this paragraph shall not be deemed to prevent or limit the right of Employee to invest any of his surplus funds in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything herein contained be deemed to prevent Employee from investing or limit Employee's right to invest his surplus funds in real estate. Any of the foregoing to the contrary notwithstanding, the provisions of this section 7 shall not apply if the termination of the Employee's employment with the Company comes within the meaning of section 10, paragraph a, herein.

8. RESTRICTIONS ON USE OR DISCLOSURE OF CUSTOMER LIST AND OTHER INFORMATION.

For a period of one (1) year following his termination of employment for whatever reason, Employee agrees to neither call on nor solicit, either for himself or any other person or firm, for any purpose relating in any way to Employer's business or prospective business, any of whom Employee first learned during his employment hereunder, nor shall Employee make known to any person or firm, either directly or indirectly, the names and addresses of any such customers. In addition, for a period of one (1) year following his termination of employment for whatever reason, Employee agrees not to make known to any person or firm, either

directly or indirectly, any information relating in any manner to Employer's trade or business relationship with any of the customers of Employer on whom Employee called, with whom Employee became acquainted, or of whom Employee learned during his employment hereunder.

9. TERMINATION.

a. Due to Discontinuance of Business. Anything herein contained to the contrary notwithstanding, in the event that Employer, or his successors or assigns, shall discontinue operation his business as it relates to Donald Junowich, then this agreement shall terminate as of the last day of the month in which Employer, or his successors or assigns, ceases such operations with the same force and effect as if such last day of the month were originally set as the termination date hereof.

b. Prolonged Illness of Employee. If the disability or incapacity of Employee to properly perform his duties should continue during any employment period for a consecutive of six (6) months, Employer, at his option, may terminate this agreement, whereupon Employer shall be released from all further obligations contained in this agreement.

c. Death of Employee. This agreement shall terminate immediately on the death of Employee, and on the happening of that event, Employer shall not be liable for payment of salary accruing thereafter.

d. By Employer. This agreement may be terminated by Employer on thirty (30) days written notice to Employee.

e. Breach by Employee. Except as otherwise provided elsewhere in this section 10, the parties hereby agree and stipulate that if during the term of this agreement, Employee should fail or refuse to perform the services as provided in sections 1 and 4, or should be unable to so perform, or should terminate his employment with Employer, or should engage in gainful employment with another employer without the express written consent of Employer, or should otherwise breach any of the terms of this agreement, Employer may regard this agreement as materially breached by Employee, Employer's obligation to make the payments herein shall cease, and Employer may obtain relief in the amount of damages suffered including a reasonable attorney's fee.

f. Equitable Relief. In addition to any other remedy provided for herein or at law, it is further agree that any breach or evasion of any of the terms of this agreement by either party will result in immediate and irreparable injury to the other party and will authorize recourse to injunction and/or specific performance.

10. REPRESENTATIONS BY EMPLOYEE.

Employee represents and warrants that he is not a party to, nor bound by, any agreement with any person, firm or corporation, whether written or oral, which in any way limits his employment with Employer or the duties he may perform for Employer, or which

limits him in any way from imparting to Employer any knowledge or understanding he may have which might be of use in Employer's business; provided, however, that nothing in this agreement shall require Employee to disclose to Employer any trade secret or other confidential information belonging to others of which Employee has knowledge unless the owner of such trade secret or confidential information shall authorize disclosure thereof, and withholding of such trade secret or confidential information shall not be a breach of this agreement.

11. MODIFICATION OF CONTRACT.

No waiver or modification of this agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and fully executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence of any proceeding, arbitration or litigation between the parties hereto arising out of or affecting this agreement or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of this paragraph may not be waived except as herein set forth.

12. SEVERABILITY.

All agreements and covenants contained herein are severable, and in the event any of them, with the exception of those contained in paragraphs one and three, shall be held to be invalid by any court of competent jurisdiction, this agreement shall be

interpreted as if such invalid agreements or covenants were not contained herein.

13. NOTICES.

Any notice required or permitted to be given under this agreement shall be sufficient if in writing and sent by mail to the residence of either party.

14. CHOICE OF LAW.

It is the intention of the parties hereto that this agreement and the performance hereunder and all suits and special proceedings hereunder be construed in accordance with and under and pursuant to the laws of the State of Utah and that in any action, special proceeding or other proceeding that may be brought, arising out of, in connection with, or by reason of this agreement, the laws of the State of Utah shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

15. ARBITRATION.

Any differences, claims, or matters in dispute arising between Employer and Employee out of or connected with this Contract shall be submitted by them to arbitration by the American Arbitration Association ("AAA") or its successor and the determination of the AAA shall be final and absolute. The arbitrator shall be governed by the duly promulgated rules and regulations of the AAA or its successor, and pertinent provisions of the law of the State of Utah, relating to arbitration. The decision of the arbitrator may

be entered as a judgment in any court of the State of Utah or elsewhere.

16. ATTORNEYS' FEES.

In the event that any action is filed in relation to this Contract, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees.

17. PARAGRAPH HEADINGS.

The titles to the paragraphs of this Contract are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Contract.

IN WITNESS WHEREOF, Employer and Employee have signed this agreement this first day of December, 1993.

SOLE SOURCE MEDIA, INC.,
a Utah corporation (the "Employer")

By _____

Its President

_____
Brad Stewart (the "Employee")

ADDENDUM "C"

SHAREHOLDERS AGREEMENT
Dated July 1, 1993

SHAREHOLDERS AGREEMENT

OF

SOLE SOURCE MEDIA, INC.

THIS SHAREHOLDERS AGREEMENT (the "Agreement") is made as of the first day of July, 1993, by and among Sole Source Media, Inc., a Utah corporation (the "Corporation"), Donald Junowich, Brad Stewart, Kevin Stitt and William Morris (collectively the "Shareholders"); collectively referred to as the "Parties", or individually, a "Party".

WHEREAS, the Corporation has an authorized capital stock consisting of 10,000 shares of common stock, no par value (the "Shares");

WHEREAS, the Shareholders are the legal and beneficial owners of all of the issued and outstanding Shares of stock, consisting of 1,000 Shares;

WHEREAS, the Parties believe that it is in the best interests of the Corporation and the Shareholders to establish certain agreements concerning governance of the Corporation, to make provision for the future disposition of the Shares and other matters relating to the Shares.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Definitions. For purposes of this Agreement:

(a) The "Board of Directors" shall mean all Directors of the Corporation then constituting the Board of Directors of the Corporation.

(b) The term "Corporation Act" shall mean the Utah Revised Business Corporation Act.

(c) The term "Director" means any person acting now or in the future as a director of the Corporation.

(d) The term "Future Shareholder" includes any person or entity obtaining ownership of any shares.

(e) The term "Shares" means shares of the common stock of the Corporation presently outstanding and all shares of common stock of the Corporation which may hereafter be issued by the Corporation.

(f) The term "Shareholders" includes the person or entities named in the caption of this Agreement.

2. Term. The "Term" of this Agreement shall be for three years (3) years, unless earlier terminated or extended by the unanimous written consent of the Corporation, the Shareholders and any Future Shareholder who becomes bound by the terms of this Agreement as provided below. Notwithstanding, the provision set forth herein shall remain in full force and effect for so long as any Shares remain issued and outstanding and owned by more than one Shareholder or the direct or subsequent transferee of a Shareholder.

3. Distributions to Shareholders. During the Term of this Agreement, the Shareholders agree that distributions of profits of the Corporation shall be in the following percentages, regardless of whether such percentages are in proportion to the actual percentage of ownership of Shares:

Shareholder	Distribution
Donald Junowich	31 Percent
Brad Stewart	31 Percent
Kevin Stitt	15 Percent
William Morris	15 Percent

The remaining eight percent (8%) shall be set aside to be appropriated by the Board of Directors for corporate purposes as is deemed necessary, but in no event shall such profits be carried on the books of the Corporation for a period in excess of 75 days as required and governed by applicable I.R.S. regulations.

4. Directors. During the Term of this Agreement, the following individuals shall serve as Directors of the Corporation, and shall not be removed and new Directors shall not be elected, without the unanimous vote of the Shareholders of the Corporation:

Directors
Donald Junowich
Brad Stewart
Kevin Stitt
William Morris

5. Officers. During the Term of this Agreement, the following individuals shall serve in the offices stated next to their name, and shall not be removed by the Board of Directors and new officers shall not be elected or appointed unless with the unanimous vote of the Board of Directors and the Shareholders:

Name	Title
Donald Junowich	President
Brad Stewart	Vice President
Kevin Stitt	Secretary
William Morris	Treasurer

6. Dissolution of the Corporation. The Corporation shall automatically dissolve on June 30, 1996, unless extended by a majority vote of holders of the issued stock at a duly called meeting of the Corporation.

7. Scope of Agreement. This Agreement shall only be enforceable against and with respect to the Corporation, the Shareholders and Future Shareholders who specifically agree to be bound by the terms of this Agreement in writing at the time of such Future Shareholders' acquisition of Shares.

8. Compliance with the Securities Act.

(a) Each Shareholder agrees that he or she will not sell, transfer, distribute or otherwise dispose of any of the Shares except (i) pursuant to an effective registration statement under the Securities Act of 1933 (the "Act") as then in effect covering such Shares and such proposed disposition or (ii) upon first furnishing to the Corporation an opinion of counsel satisfactory to the Corporation stating that the proposed sale, transfer, distribution or other disposition is not in violation of the registration requirements of the Act and providing such undertakings and agreements with the Corporation by the proposed transferee as the Corporation may reasonably require to insure continued compliance with the Act.

(b) Each Shareholder acknowledges that his or her Shares are restricted securities that are unregistered, and that he or she must hold them indefinitely unless they are subsequently registered under the Act or an exemption from such registration is available; and that the Corporation is under no obligation to register the Shares or to comply with any such exemption.

9. Restriction on Lifetime Transfer of Shares.

(a) Before any of the Shares may be sold or transferred, including transfer by operation of law and by pledgees or holders of other security interests desiring to exercise a power of sale, the holder of such Shares proposing such sale or transfer (the "Transferor") shall first give written notice thereof to the Corporation and each other Shareholder, stating the proposed transferee, the number of Shares proposed to be transferred, the purchase price, if any, and the terms of the proposed transaction. The Corporation shall thereupon have the option, but not the obligation, to acquire some or all of the Shares proposed to be transferred for the purchase price provided in Section 18 (the "Purchase Price"). Within thirty (30) days after the giving of such notice by the Transferor, the Corporation shall give written notice to the Transferor and to the other Shareholders stating whether or not it elects to exercise the option to purchase, the number of Shares, if any, it elects to purchase and a date and time (the "Closing Date") for consummation of the purchase which Closing Date shall not be less than sixty (60) or more than ninety (90) days after the giving of such notice. Failure by the Corporation to give such notice within such time period shall be deemed an election by the Corporation not to exercise such option. The Transferor shall not be entitled to vote, either as a stockholder or director, in connection with the decision of the Corporation whether to exercise its option to purchase his or her Shares; provided, that if his or her vote is required for valid corporate action, the Transferor shall vote in accordance with the decision of the majority of the other directors or Shareholders.

(b) If the Corporation fails to exercise such option with respect to all of the Shares proposed to be transferred, each Shareholder (other than the Transferor) shall thereupon have the option, but not the obligation, to purchase for the Purchase Price that portion of all of the Shares proposed to be transferred as to which the Corporation has not exercised its option in proportion to the Shareholder's then ownership of Shares. Within forty-five (45) days after the giving of the notice provided in subsection (a) hereof by the Transferor, each other Shareholder shall give written notice to the Transferor, the other Shareholders and the Corporation stating whether or not he or she elects to exercise his or her option, the umber of Shares, if any, which he or she elects to purchase, and a date and time (the "Closing Date") for consummation of the purchase not less than thirty (30) or more than sixty (60) days after the giving of such notice. Such Closing Date

shall be the same date as the Closing Date selected by the Corporation if it has exercised its option provided in subsection (a). If any Shareholder elects not to exercise his or her option with respect to some or all of the Shares which he or she is entitled to purchase, each of the other Shareholders may elect to purchase such Shares in the manner provided in this subsection. Failure by any Shareholder to give such notice with such time period shall be deemed an election by the Shareholder not to exercise his or her option.

(c) Notwithstanding anything herein to the contrary, the Transferor shall in no event be required to sell hereunder less than all of the Shares proposed to be transferred in accordance with his or her notice under subsection (a).

(d) If all of the Shares offered hereunder are not purchased within the respective time periods stated above, the Transferor may transfer such Shares at any time during the 30-day period after the termination of the applicable time period, but only upon the terms and to the transferee stated in his or her notice under subsection (a). After such Shares are so transferred, or if the transfer is not consummated within such period, the Shares shall again become subject to the terms of this Agreement.

10. Corporation's Option to Purchase Shares.

(a) In the event of the termination of employment of a Shareholder with the Corporation for any reason other than death (provided, that in connection with the termination, there is no bona fide offer to purchase under Section 9), the Corporation shall have the option to purchase all of the Shares owned by such Shareholder at his or her termination of employment, at the Purchase Price. If the option is exercised by the Corporation, the purchase by the Corporation shall be consummated within ninety (90) days after the Shareholder's termination of employment.

(b) The Corporation shall pay fifteen percent (15%) of the Purchase Price at the time of closing the sale and the balance in ten (10) equal annual installments of principal commencing on the first anniversary of the closing with interest on the unpaid principal balance at ten percent (10%) per annum. Prepayment in whole or in part without penalty may be made at any time. In the event that the Corporation is in default in the payment of any installment of principal or interest, the principal balance and all accrued interest shall become immediately due and payable at the option of the payee. In the event that legally available funds are insufficient to pay any installment, the Corporation shall take such reasonable action, including without limitation a recapitalization or revaluation of assets, as may be legally permissible to create sufficient available funds for such payment.

(c) The certificates for the Shares purchased by the Corporation shall be held by the Shareholder as security for the payment of the Purchase Price, and such certificates shall be delivered to the Corporation, duly endorsed, concurrently with the payment of the last installment of Purchase Price. Shares purchased by the Corporation shall not be considered outstanding or entitled to vote so long as the Corporation is not in default hereunder.

(d) Until the entire Purchase Price for all Shares purchased by the Corporation has been paid in full, the Corporation shall not: (1) pay any dividend or make any distribution with respect to Shares outside the ordinary course of business; (2) purchase, redeem or otherwise reacquire any Shares other than pursuant to this Agreement; or (3) take any other action outside the ordinary course of business which may reasonably be expected to increase the risk of nonpayment of the unpaid balance of the Purchase Price.

11. Corporation's Obligation to Purchase Shares.

(a) In the event of the death of a Shareholder, the Corporation shall purchase and the estate of the deceased Shareholder shall sell all Shares owned by such Shareholder at his or her death, at the Purchase Price. The purchase by the Corporation shall be consummated within thirty (30) days after the appointment of the Shareholder's legal representative. The Corporation's obligation to purchase Shares hereunder shall remain in effect notwithstanding any transfer of the Shares by a Shareholder or any subsequent stockholder. To fund the obligation of the Corporation to purchase Shares owned by a deceased Shareholder, the Corporation intends to purchase and maintain in effect one or more insurance policies on the life of each Shareholder which name the Corporation as beneficiary.

(b) With respect to Shares purchased by the Corporation under this Section, the Corporation shall pay any proceeds of life insurance policies on the life of the deceased Shareholder received by the Corporation to the estate (or trust established by the Shareholder and designated by the Shareholder in a written notice delivered to the Corporation during his or her lifetime identifying the trust as the entity to receive such payments) of the deceased Shareholder to the extent of the Purchase Price. The excess insurance proceeds, if any, shall be the property of the Corporation. After payment of the insurance proceeds, the Corporation may elect to pay the unpaid balance, if any, of the Purchase Price in installments in accordance with the following term:

(i) The Corporation shall pay fifteen percent (15%) of the unpaid balance of Purchase Price at the time of closing the sale and the balance in five (5) equal annual

installments of principal commencing on the first anniversary of the closing with interest on the unpaid principal balance at ten percent (10%) per annum. Prepayment in whole or in part without penalty may be made at any time. In the event that the Corporation is in default int he payment of any installment of principal or interest, the principal balance and all accrued interests shall become immediately due and payable at the option of the payee. In the event that legally available funds are insufficient to pay any installment, the corporation shall take such reasonable action, including without limitation a recapitalization or revaluation of assets, as may be legally permissible to create sufficient available funds for such payment.

(ii) The certificates for the Shares purchased by the Corporation shall be held by the estate of the deceased Shareholder as security for the payment of the Purchase Price, and such certificates shall be delivered to the Corporation, duly endorsed, concurrently with the payment of the last installment of Purchase Price. Shares purchased by the Corporation shall not be considered outstanding or entitled to vote so long as the Corporation is not in default hereunder.

(iii) Until the entire Purchase Price for all Shares purchased by the Corporation has been paid in full, the Corporation shall not: (1) pay any dividend or make any distribution with respect to Shares outside the ordinary course of business; (2) purchase, redeem or otherwise reacquire any Shares other than pursuant to this Agreement; or (3) take any other action outside the ordinary course of business which may reasonably be expected to increase the risk of nonpayment of the unpaid balance of the Purchase Price.

12. <u>The Purchase Price.</u>

(a) The Purchase Price shall be determined as follows:

(i) In the case of a proposed sale or transfer under Section 15 to a third party in a bona fide transaction for fair value, payable in cash or the equivalent currently or in future installments, the Purchase Price for such Shares shall be the value offered by such third party payable upon the same terms.

(ii) In all other cases, including without limitation a proposed transfer or the disposition not constituting a sale described in subsection (a)(i), the Purchase Price shall be the "agreed value" determined in accordance with subsection (b) subject to adjustment by the independent certified public accountant then serving the Corporation to reflect material events and changes in circumstances occurring subsequent to the date on which the agreed value was last fixed.

(b) Until changed as provided hereafter, the "agreed value" per Share as of the date of this Agreement is one Dollar ($1). This price has been agreed upon by the Corporation and the Shareholders as representing the fair value per Share. Within sixty (60) days following the close of each calendar year of the Corporation, beginning with the calendar year ending December 31, 1993, or more frequently as they may determine, the stockholders and the Corporation shall in a writing signed by all of them reaffirm the agreed value or agree upon a new value. In the event that the stockholders and the Corporation fail either to reaffirm the value per Share or agree upon a new value as of the end of any fiscal year, the agreed value most recently fixed shall, subject to adjustment pursuant to subsection (a), continue in effect for all purposes.

13. Subchapter S Provisions. The Corporation and each Shareholder covenant and agree not to do any act or fail to do any act, the commission or omission of which would voluntarily or involuntarily cause the termination of the election of the Corporation and the Shareholders under and pursuant to Subchapter S (Sections 1361 through 1379 inclusive) of the Internal Revenue Code of 1986, as amended. In the event of the violation of any provision of this Section by the Corporation or any Shareholder, the Shareholder who authorizes or causes such violation (whether in his or her capacity as a stockholder, director, officer, employee or agent for the Corporation or otherwise) shall be liable to the Corporation and to the other stockholders for any damages, liabilities or costs resulting directly or indirectly therefrom, including, without limitation, any additional Federal income tax liability of the other stockholders for any taxable year of such other stockholders during which the Corporation's fiscal year ends and the Corporation could have otherwise had an effective election under Subchapter S; provided, however that no stockholder shall be so liable if such stockholder acted in good faith and belief and upon the advice of tax counsel that termination of the election would not be caused thereby; and provided, further, that any additional Federal income tax liability of other stockholders resulting directly or indirectly from a violation of any provision of this Section shall be computed by the independent certified public accountant then servicing the Corporation and shall be conclusive and binding upon all Parties for all purposes and in all respects.

14. Legend; Transfers of Record. Upon execution of this Agreement the certificates representing Shares of the Corporation shall be surrendered to the Corporation and endorsed as follows:

> "The Shares of Common Stock of Sole Source Media, Inc., a Utah corporation represented by this certificate are subject to the restrictions and options stated in, and are transferable only upon compliance with, the

provisions of an Agreement dated July 1, 1993, by and among the various Shareholders and Sole Source Media, Inc., a Utah corporation, a copy of which is on file in the office of the Secretary of Utah and will be supplied to any Shareholder upon five (5) days prior written notice, postage prepaid."

After endorsement, the certificates shall be returned to the Shareholders who shall, subject to the terms of this Agreement, be entitled to exercise all rights of ownership of such Shares. All certificates representing Shares of the Corporation from the date hereof until the termination of the restrictions imposed by this Agreement with respect to such Shares shall bear the same endorsement. No Shares shall be transferred on the books of the Corporation except upon compliance with the restrictions on transfer contained in this Agreement.

15. Specific Performance. The Parties hereby declare that it is impossible to measure in money the damages which will accrue to a Party by reason of failure to perform any of the obligations of or under this Agreement. Therefore, if any Party or the executor, administrator or other legal representative of a deceased Shareholder's estate shall institute any action or proceeding to enforce the provisions hereof, any person (including the Corporation) against whom such action or proceeding is brought hereby waives the claim or defense therein that such Party or such legal representatives has or have an adequate remedy at law, and such person shall not urge in any such action or proceeding the claim or defense that such remedy at law exists.

16. Miscellaneous.

(a) Any notice hereunder shall be personally delivered or mailed by registered or certified mail, postage prepaid, and addressed to any Shareholder at his address as appearing in the records of the Corporation and to the Corporation at its principal office, or at such other address as may be specified by a Party to the other Parties by notice given in the manner herein provided.

(b) No waiver by a Party hereto of a breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision hereof.

(c) This Agreement shall be governed by the laws of the State of Utah; it sets forth the entire Agreement among the Parties concerning the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof; and any amendment or modification hereof will be effective only if in writing and signed by the Parties affected thereby.

(d) This Agreement shall bind and benefit the Parties and their respective successors and legal representatives.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

SOLE SOURCE MEDIA, INC.

By Donald Junowich

Its President

ATTEST:

Secretary

Donald Junowich

Brad Stewart

Kevin Stitt

William Morris

ADDENDUM "D"

NOTICE OF EXERCISE OF OPTION AND SHAREHOLDERS ACTION

Dated December 5, 1994

NOTICE OF EXERCISE OF OPTION AND SHAREHOLDERS ACTION

December 5, 1994 Certified Mail

Brad Stewart
[Address in Company's records]
Provo, UT

Whereas shareholders of Sole Source Media, Inc. (the "Corporation") met on November 4, 1994, at which meeting you and all other shareholders were present, and shareholders owning a majority of the total outstanding shares voted to terminate your employment as of November 4, 1994, pursuant to Section 9e of that certain Employment Contract by and between you and the Corporation, dated December 1, 1993, and

Whereas a majority of the shareholders have consented to the adoption of a resolution for the Corporation to exercise its option to purchase all Three Hundred Thirty (330) of your outstanding shares of the Corporation (a copy of the resolution is attached as Exhibit A to this notice), pursuant to Paragraph 10(a) of that certain Shareholders Agreement (the "Agreement") dated July 1, 1993, by and among the Corporation, Donald Junowich, Brad Stewart, Kevin Stitt and William Morris, at the agreed Purchase Price of ONE DOLLAR ($1.00) per share, or a total of THREE HUNDRED THIRTY DOLLARS ($330.00) as provided in Paragraph 12 of the Agreement,

Therefore, the Corporation hereby gives you notice of the resolution and action by the shareholders, and also hereby gives you notice of its exercise of the option to purchase your shares pursuant to the terms of the Agreement. You are therefore instructed to deliver the shares to the Corporation, duly endorsed, no later than December 31, 1994, at which time the Corporation will tender payment in full, pursuant to Paragraph 10(c) of the Agreement.

SOLE SOURCE MEDIA, INC.

By: _____
Its: _____

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CONSENT OF SHAREHOLDERS
OF
SOLE SOURCE MEDIA, INC.

The undersigned being a majority of all the shareholders of Sole Source Media, Inc. (the "Corporation") do hereby consent to the adoption of the following resolution in accordance with Section 16-10a-704 of the Utah Revised Business Corporation Act and Article 2, Section 11 of the Corporation's Bylaws:

Exercise of Option to Purchase Shares

WHEREAS the employment of Brad Stewart was terminated, effective November 4, 1994, and

WHEREAS the termination of the employment of Brad Stewart creates an option for the Corporation to purchase all of the shares of the Corporation owned by Brad Stewart, pursuant to that certain Shareholders Agreement, made as of July 1, 1994, by and among the Corporation, Donald Junowich, Brad Stewart, Kevin Stitt and William Morris (the "Agreement"),

BE IT THEREFORE RESOLVED, that the Corporation shall immediately exercise its option, pursuant to the Agreement, to purchase all of the Three Hundred Thirty (330) outstanding shares of the Corporation owned by Brad Stewart, with demand for tender of the share certificates to be made immediately and full payment of the Purchase Price of Three Hundred Thirty Dollars ($330.00), as set by the Agreement, to be made upon tender of the share certificates on or before December 31, 1994.

DATE	SHAREHOLDER	SHARES OWNED	PERCENT OWNED
12/6/94	Don Junowich	330 shares	33%
12/7/94	Kevin Stitt	170 shares	17%
12/7/94	William E. Morris	170 shares	17%

ADDENDUM "E"

MEETING MINUTES
Dated November 4, 1994

MEETING OF SHAREHOLDERS
OF
SOLE SOURCE MEDIA, INC.

The shareholders of all of the outstanding shares of Sole Source Media, Inc. (the "Corporation") having met without objection, by telephone, on November 4, 1994, having therefore waived requirement of notice, the majority of all shareholders voted in favor of the adoption of the following resolution in accordance with Article 2, Sections 3 and 4 of the Corporation's Bylaws:

Termination of Brad Stewart

WHEREAS, Brad Stewart has given the Corporation notice of his decision to participate as a principal in another company in direct competition with the Corporation, which participation is in violation of Sections 4, and 5 of the December 1, 1993 Employment Contract by and between Brad Stewart and the Corporation, therefore be it

RESOLVED, that the employment of Brad Stewart as Vice President of the Corporation be terminated, effective November 4, 1994 and that his salary and related benefits be terminated as of that date.

VOTE	SHAREHOLDER	SHARES OWNED	PERCENT OWNED
For	Don Junowich	330 shares	33%
For	Kevin Stitt	170 shares	17%
For	William E. Morris	170 shares	17%
Abstain	Brad Stewart	330 shares	33%

Don Junowich, Chairman

Kevin Stitt, Secretary

ADDENDUM "F"

MEMO TO SOLE SOURCE SHAREHOLDERS
Dated December 12, 1994

12/12/94

To: Sole Source Shareholders
From: Brad Stewart

Following is an outline of issues which require discussion and resolution, pursuant to my termination from Sole Source. Where applicable I have provided specific information regarding the issue at hand. Other items are listed pending the process of legal evaluation and final negotiation.

1. Car Lease Issue - The separation agreement dated and signed 11/4/94, allows provision for the continued use of the leased auto. The agreement also specifies that the full value of the remaining payments are to be paid by me in advance, with a reimbursement allowance at the termination of the lease, contingent upon mileage and the condition of the vehicle. It also stipulates that I provide and pay for the insurance. Based on information I have received regarding the lease and the insurance coverage I propose the following amended agreement.

Lease Payments: Brad Stewart is responsible for the lease value in excess of $300 monthly. Payments will be made quarterly and in advance. (3 payments) All maintenance and repairs are the exclusive responsibility of Brad Stewart. Information received from Chuck Barber at the Mitsubishi Dealership indicates the car is in the name of the corporation with Don Junowich signing only as a "corporate guarantor" and therefore is not exposed personally on the lease as was originally assumed. In that I am currently a shareholder with the same exposure as the other shareholders regarding the car leases it seems inequitable to deposit the entire advance lease payment with Sole Source. Until such time that we reach an agreement regarding payment of Q-2 dividends, a release from the bank loan liability, full reimbursement for 94 expenses, and interest expense regarding my $30M CD collateral, I would extend the option for Sole Source to deduct my share of the lease payment from those moneys owing. Please advise if this is agreeable. The final submission of expenses and interest expense is forthcoming.

Insurance: I accept the responsibility for the financial obligation regarding insurance coverage. However, according to Wiseman Insurance, because the car is in the name of the corporation, the policy must remain intact. It is perfectly legal and acceptable to continue to list me as the primary driver, even though I am not an active employee of the company. I do not have records regarding the annual premium value. Please let me know the amount due and how you wish to handle payment.

2. Resolution to purchase shares. This offer is unacceptable based on the "valuation" of stock value. Although I am agreeable to discuss a buyout, it will first be necessary for all parties to agree to a posture of being fair and equitable. This offer falls way short.

3. Reimbursement of Expenses - According to my records I have not submitted nor been

paid for any reimbursement of expenses incurred in 1994. If I am in error, please mail or fax copies of validation of payment. In fact, please confirm either way. I am working on the final expense documentation. I think my last check for expenses was cut in January 94, but for 1993 expenses.

4. Interest Due on Loan Collateral ($30M CD) I have requested Kamdar & Co. to provide this billing for several months. This will reflect the difference between the interest I collected from the bank and the rate of interest on the note. We're not talking a lot of money here. I will forward upon receipt.

5.Access to Financial Information. I have not received corporate financial information for the Q-2 restatement or Q-3. I will need this information on a regular basis so long as I continue as a shareholder. Please let me know when this information will be available.

6. Personal Guarantor - Vendor Accounts I am listed on several accounts as a personal guarantor. I do not have accurate records which identity these specific vendors. I think the list would include Zellerbach, Lorraine, Dixon, Sun Litho, and possibly others. I understand you have notified vendors of my termination and that I am no longer authorized to purchase on behalf on Sole Source so I thought perhaps you could also notify the vendors that I am no longer a valid personal guarantor on the account. If you wish to decline to provide this notification please advise and I will proceed accordingly.

7. Payment of Dividends- Please furnish your proposed schedule for distribution of dividends for the unpaid quarters. Also, please indicate the balance due my shares as of the period ending September 30, 1994.

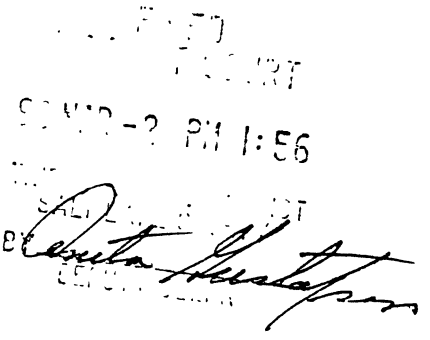
8. Valuation of Fixed Assets - As part of my separation agreement I was allowed to take two computers and assume ownership of the fax machine. The fax machine developed a malfunction with the thermal fusing bar and was taken to Lloyd's in Provo for repair. The estimate for repair was in excess of the value of the machine. They gave me $75 credit against a plain paper fax machine which I charged on a personal credit card. This was in June of 1994. This purchase was and will not be submitted for reimbursement.
To prevent future conflict over division of fixed assets I suggest we establish a fair market value of the equipment that I acquired from Sole Source. Additionally, how do we address the division of assets at the termination of the corporation, providing I am still a shareholder? Do we then credit the value of the computers against that asset value?

9. Current stock value and Company worth - There are provisions in the shareholders agreement with respect to valuation of the company. This valuation was to take place annually, at the end of a fiscal year or calendar year. I do not have a current copy of the corporate minutes which document this activity. If we are to begin constructive discussion regarding a purchase of shares, it is a prerequisite to establish a value. It may be best to use the year ending 1994 as a basis for valuation. We also will need to reach an agreement on who is to make the assessment and on what criteria. Please advise how you plan to proceed with this activity.

- PLEASE LET ME KNOW IF I HAVE OVERLOOKED ANYTHING YOU FEEL SHOULD BE ADDRESSED.

ADDENDUM "G"

AFFIDAVIT OF KEVIN STITT
Dated February 27, 1998



GARY L. JOHNSON [A4353]
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RICHARDS, BRANDT, MILLER & NELSON
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Key Bank Tower, Seventh Floor
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Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant and BRAD STEWART, Defendants and Counterclaimant,	**AFFIDAVIT OF KEVIN STITT**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge Glenn K. Iwasaki

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

I, KEVIN STITT, being first duly sworn, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth in this Affidavit, am over the age of eighteen (18) years, and am otherwise competent to testify to the facts set forth herein.

2. From July 1, 1993 through June 30, 1996, I was an officer, director, and shareholder of Sole Source Media, Inc. ("**Sole Source**"). My office was that of secretary to the corporation, and in that capacity I took minutes of shareholder meetings and kept records of the corporation.

3. From July 1, 1993 through 1994, Bradley K. Stewart ("**Stewart**") was also an officer, director, and shareholder of Sole Source.

4. On October 27, 1994, a shareholders' meeting at Sole Source was held to consider a project from the Avery-Dennison Company ("**Avery**") known as "Communique." At the meeting, the shareholders discussed discontinuing the Communique project, and also discussed terminating the employment of Alane Anderson ("**Anderson**") and Anthony Dato ("**Dato**"), who were employees of Sole Source with specific assignments on the Communique project.

5. During the meeting, Stewart told the shareholders that if Sole Source was not interested in pursuing Communique, Stewart would be interested in pursuing it on his own.

6. After Donald Junowich ("**Junowich**") left the October 27 meeting, Stewart told William Morris ("**Morris**") and me that he could not work with Junowich and suggested that we terminate Junowich.

7. At sometime after the October 27 meeting, Stewart told me that he was planning to open a new business with Anderson in order to handle the Communique project, and said that I would have to choose between Junowich and Stewart.

8. On November 4, 1994, another meeting of Sole Source shareholders was held at Sole Source's principal corporate office. Donald Junowich participated by telephone. Stewart, Morris, and I were all present. I took minutes of the meeting, and a true and correct copy of those minutes is attached to the accompanying Memorandum as Exhibit "4."

9. The November 4 meeting was called to consider removing Stewart because he was forming a competing business. The meeting was called without prior notice. Stewart stated no objection to the meeting being held or to the shareholders considering any agenda items.

10. Junowich, Morris, and I all voted to remove Stewart as a member of the Board of Directors, and also to remove him as an officer of Sole Source. Stewart abstained from each vote.

11. The shareholders of Sole Source did not reaffirm the agreed value of a share of stock in Sole Source at the end of 1993 or 1994, as contemplated in the Shareholders Agreement. The shareholders also did not agree upon a new value at the end of 1993 or 1994.

12. The certified public accountant then performing services for Sole Source made no adjustment in the value per share at the end of 1993 or 1994.

13. When Sole Source was being formed as a corporation, and the Shareholders Agreement was being prepared, the shareholders agreed that the value per share should be $1.00 in order to discourage a shareholder from leaving Sole Source and starting a competing business.

DATED this 27TH day of February, 1998.

KEVIN STITT

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 27 day of February, 1998, personally appeared before me, KEVIN STITT, whose identity has been proven on the basis of satisfactory evidence, being first duly sworn, acknowledges that he executed the foregoing instrument, for the purposes stated therein, of his own voluntary act.

NOTARY PUBLIC
My Commission Expires:
1/9/2000

187517
sp:2/26/98
#13314-001

NOTARY PUBLIC
MICHAEL C. METTERS
734 S Lake St.
Salt Lake City, Utah 84102

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 2nd day of ~~February~~ March, 1998, to the following:

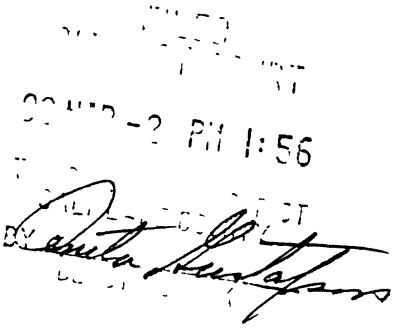
Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendant and Third-Party Plaintiff

Barbara J. McDaniel

187517
sp:2/26/98
#13314-001

ADDENDUM "H"

AFFIDAVIT OF WILLIAM MORRIS
Dated February 27, 1998



GARY L. JOHNSON [A4353]
MATTHEW C. BARNECK [A5249]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff and Third-Party Defendants
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Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant and BRAD STEWART, Defendants and Counterclaimant,	**AFFIDAVIT OF WILLIAM MORRIS**
BRAD STEWART, Third-Party Plaintiff, vs DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge Glenn K. Iwasaki

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

I, WILLIAM MORRIS, being first duly sworn, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth in this Affidavit, am over the age of eighteen (18) years, and am otherwise competent to testify to the facts set forth herein.

2. From July 1, 1993 through June 30, 1996, I was an officer, director, and shareholder of Sole Source Media, Inc. ("**Sole Source**").

3. From July 1, 1993 through 1994, Bradley K. Stewart ("**Stewart**") was also an officer, director, and shareholder of Sole Source.

4. In August 1994, after some negotiation and correspondence with the Avery-Dennison Company ("**Avery**"), Sole Source was notified that Avery would hire Sole Source to be manager for a significant project known as "Communique."

5. However, Avery delayed commencement of the Communique project, and Sole Source ultimately determined it could not continue as project manager.

6. At a meeting of Sole Source shareholders in later October 1994, the shareholders discussed discontinuing the Communique project. We also discussed terminating the employment of Alane Anderson ("**Anderson**") and Anthony Dato ("**Dato**"), who were the general manager and lead coordinator, respectively, of the Communique project for Sole Source.

7. At the meeting, Stewart said that if Sole Source did not want to pursue the Communique project, Stewart may want to pursue it individually.

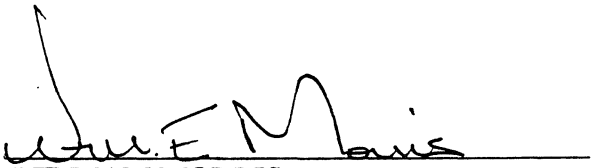
8. After Junowich left the meeting, Stewart told Kevin Stitt ("**Stitt**") and me that he could not work with Junowich and that we should terminate Junowich.

9. Within a few days after the October meeting, Stewart told me that he planned to open a new business with Anderson to handle the Communique project, and said that I should take control of the company and that we would be better off without Junowich.

10. On November 4, 1994, another shareholders' meeting was called to consider removing Stewart because he was forming a competing business. I voted in favor of Stewart's termination as a member of the Board of Directors and as an officer of Sole Source, and Donald Junowich ("**Junowich**") and Stitt also voted in favor of both proposals. Stewart abstained from each vote.

11. When the Shareholders Agreement was prepared, the shareholders agreed upon a stock repurchase price of $1.00 per share in order to discourage a shareholder from leaving and starting a competing business.

DATED this 27th day of February, 1998.



WILLIAM MORRIS

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 27 day of February, 1998, personally appeared before me, WILLIAM MORRIS, whose identity has been proven on the basis of satisfactory evidence, being first duly sworn, acknowledges that he executed the foregoing instrument, for the purposes stated therein, of his own voluntary act.

NOTARY PUBLIC
My Commission Expires:
1/9/2000

NOTARY PUBLIC
MICHAEL C. METTERS
734 S Lake St.
Salt Lake City, Utah 84102
My Commission Expires January 9, 2000
State of Utah

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 2nd day of ~~February~~ March, 1998, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendant and Third-Party Plaintiff

Barbara C. McDaniel

187516
sp:2/27/98
#13314-001

ADDENDUM "I"

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW
Dated December 14, 1998

GARY L. JOHNSON [A4353]
MATTHEW C. BARNECK [A5249]
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant, and BRAD STEWART, Defendant and Counterclaimant,	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge William W. Barrett

This matter came before the Court as previously scheduled on July 1, 1998, on Plaintiff's Motion for Partial Summary Judgment ("**MPSJ**"), before the Honorable William W.

Barrett of the Third Judicial District Court at 450 South State Street, Courtroom W35, Salt Lake City, Utah. The Plaintiff was present through its officers William Morris and Kevin Stitt and was represented by its counsel Matthew C. Barneck of Richards, Brandt, Miller & Nelson. The Defendant Brad Stewart was present and represented by his counsel Jeffrey L. Silvestrini, Esq. of Cohne, Rappaport & Segal.

The Court issued its ruling on the Plaintiff's MPSJ on September 2, 1998 (the "**Ruling**"), and subsequently entered Findings of Fact and Conclusions of Law and Judgment consistent with its Ruling on October 13, 1998. However, because the Court signed those documents without reviewing the Defendant's Objection to Proposed Findings of Fact and Conclusions of Law dated October 2, 1998, the Defendant then filed a Motion to Vacate Findings of Fact and Conclusions of Law and Judgment dated October 19, 1998. Accordingly, the Court entered an Order Vacating Findings of Fact and Conclusions of Law and Judgment dated November 9, 1998.

The Ruling only disposed of Plaintiff's MPSJ and did not rule upon three (3) outstanding discovery Motions which were also briefed and argued at the same time as the Plaintiff's MPSJ. Those Motions include Defendant's Motion to Compel Production of Documents, Plaintiff's Motion for Protective Order, and Plaintiff's Motion to Compel Production of Documents. Because the parties could not agree upon a resolution of those Motions following the Court's Ruling on the MPSJ, Plaintiff filed a Request for Further Ruling dated October 19, 1998, seeking the Court's ruling on those discovery Motions.

Defendant then filed a Motion for New Trial/Reconsideration of Summary Judgment dated October 23, 1998 asking the Court to reconsider its Ruling on Plaintiff's MPSJ. That Motion was fully briefed with a Memorandum in Opposition from the Plaintiff and a Reply Memorandum from the Defendant.

On Tuesday, November 17, 1998, the Court held a further hearing to consider (1) Defendant's Motion for New Trial/Reconsideration and (2) Plaintiff's Request for Further Ruling. The Plaintiff was again present through its officers William Morris and Kevin Stitt and was represented by its counsel of record Matthew C. Barneck of RICHARDS, BRANDT, MILLER & NELSON. The Defendant Brad Stewart was represented by his counsel Jeffrey L. Silvestrini of COHNE, RAPPAPORT & SEGAL. The Court has received and reviewed the memoranda of the parties and heard oral argument on all pending matters, and now enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Sole Source Media, Inc. ("**Sole Source**") was a Utah corporation which conducted business as a graphics management company, in which Donald Junowich ("**Junowich**"), William Morris ("**Morris**"), Kevin Stitt ("**Stitt**"), and Brad Stewart ("**Stewart**") were shareholders. Sole Source dissolved automatically by the terms of its articles of incorporation on June 30, 1996.

2. Stewart also was an officer and director of Sole Source.

3. All the shareholders, including Stewart, signed a Shareholders Agreement dated July 1, 1993 (the "**Shareholders Agreement**"). Paragraph 10(a) of the Shareholders Agreement gave Sole Source the option to re-purchase all of Stewart's shares in the event his employment was terminated "for any reason other than death . . .." (Shareholders Agreement, ¶ 10(a.)

4. Stewart also entered an employment contract dated December 1, 1993 (the "**Employment Contract**"), which provided that "Employee shall not, during the term hereof, be interested directly or indirectly, in any manner, [as a] partner, officer, stockholder, advisor, employee or in any other capacity in any other business of the type an [sic] character of business engaged in by Employer, or any allied trade . . .." (Employment Contract, ¶ 5.)

5. Paragraph 9.e. of the Employment Contract provides that it may be terminated upon the employee's breach of the agreement. Paragraph 9.d. of the Employment Contract also provides that it "may be terminated by Employer on thirty (30) days written notice to Employee." (Employment Contract, ¶ 9.)

6. In August 1994, Sole Source was notified by the Avery-Denison Company ("**Avery**") that Avery would hire Sole Source to be manager for a significant project known as "Communique." At a subsequent meeting of the Sole Source shareholders on October 27, 1994, however, the shareholders discussed discontinuing the Communique project. "Stewart stated that if Sole Source did resign the Avery Project, he might be interested in pursuing it individually." (Counterclaim and Third-Party Complaint, ¶¶ 23-25.) Stewart later informed Morris and Stitt that

the Avery Project was worthwhile and should be pursued by Sole Source. Stewart said that if Avery was unwilling to work with Junowich, a new company might be structured alongside Sole Source in order to facilitate the project. (Stewart Aff., ¶¶ 21-24.)

7. On November 4, 1994, a Sole Source shareholders meeting was held to consider terminating Stewart. Stewart did not object to the meeting being held. Although it is disputed whether Stewart abstained or voted against the proposal, it is undisputed that Junowich, Morris, and Stitt each voted to terminate Stewart's employment.

8. Stewart now owns and operates Defendant Prologic, Inc., which was established in December 1994 as a competitor of Sole Source.

9. On November 4, 1994, Junowich, Morris, and Stitt each signed a notice "to all Sole Source media employees" announcing the termination of Brad Stewart (the "**Termination Notice**"). On the same date, Morris signed a "Separation Agreement" (the "**Separation Agreement**") which recited that Stewart had been terminated as an employee of Sole Source, and provided certain severance benefits including one month's salary and continued use of a corporate automobile. Stewart acknowledges receiving the Termination Notice on or about November 4, 1994. (Affidavit of Brad Stewart, ¶ 4.) In a memorandum from Stewart to the Sole Source shareholders dated December 12, 1994 (the "**Stewart Memorandum**"), Stewart acknowledged "my termination from Sole Source."

10. On November 7, 1994, Sole Source shareholders Morris and Stitt signed an agreement (the "**Waiver Agreement**") with Stewart waiving the non-compete provision of the Employment Contract with respect to Avery. The stated intent of the Waiver Agreement to allow Stewart to pursue the Avery business without violating the Employment Contract.

11. On December 5, 1994, Sole Source sent to Stewart by certified mail a "Notice of Exercise of Option and Shareholders Action" (the "**Option Notice**") which notified Stewart that Sole Source was exercising its option to purchase Stewart's shares pursuant to the Shareholders Agreement. The Option Notice also tendered the purchase price of one dollar per share or a total of $330.00. The Option Notice instructed Stewart to deliver the shares to Sole Source duly endorsed no later than December 31, 1994, at which time Sole Source would tender payment in full. Stewart received the Option Notice and tender of purchase price but has failed and refused to surrender the shares. (Counterclaim and Third-Party Complaint, ¶ 63.) By the Stewart Memorandum, Stewart rejected the tendered purchase price.

12. The Shareholders Agreement states the purchase price to be paid upon exercise of the repurchase option. Paragraph 12(a)(ii) provides that:

> the Purchase Price shall be the "agreed value" determined in accordance with subsection (b) subject to adjustment by the independent certified public accountant then serving the Corporation to reflect material events and changes in circumstances occurring subsequent to the date on which the agreed value was last fixed.

(Shareholders Agreement, ¶ 12(a).)

13. Paragraph 12(b) provides that "the 'agreed value' per share as of the date of this Agreement is one dollar ($1). This price has been agreed upon by the Corporation and the Shareholders as representing the fair value per Share." (Shareholders Agreement, ¶ 12(b).)

14. Paragraph 12(b) also provides that within sixty (60) days following the close of a calendar year:

> the stockholders and the Corporation shall in a writing signed by all of them reaffirm the agreed value or agree upon a new value. In the event that the stockholders and the Corporation fail either to reaffirm the value per Share or agree upon a new value as of the end of any fiscal year, the agreed value most recently fixed shall, subject to adjustment pursuant to subsection (a), continue in effect for all purposes.

(Shareholders Agreement, ¶ 12(b).)

15. The agreed value was never adjusted by any independent certified public accountant serving the Corporation, and neither Stewart, Junowich, Morris, nor Stitt requested such an adjustment in the ordinary course of business. In the Stewart Memorandum, among other things, Stewart suggested that the shares of the corporation be revalued. However, the Stewart memorandum was sent after his termination. No revaluation of the shares was undertaken based upon Stewart's suggestion or for any other reason.

16. The shareholders and Sole Source did not agree in writing or otherwise to reaffirm the agreed value per share or establish a new value, as provided for in paragraph 12(b) of the Shareholders Agreement.

17. The Affidavits of William Morris and Kevin Stitt submitted with Plaintiff's MPSJ establish that, when Sole Source was formed as a corporation, the shareholders set the agreed value at $1.00 per share in order to discourage a shareholder from leaving and starting a competing business. No other extrinsic evidence was submitted by any party bearing upon the interpretation of paragraph 12 of the Shareholders Agreement.

18. At the hearing on November 17, 1998, the parties stipulated to a partial resolution of Plaintiff's Motion to Compel Production of Documents. The parties agreed that pursuant to Request No. 9 of Plaintiff's Request for Production of Documents, the parties will engage in a comparison of customer lists to determine if Stewart serviced any other customers following his termination in violation of his employment contract with Sole Source. If any such customers are identified, the Defendant Stewart agreed to produce documentation relating to his work for those customers including any financial information relating to earnings from those customers. All other issues in Plaintiff's Motion to Compel Production of Documents were reserved.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court now makes the following Conclusions of Law.

1. Sole Source properly terminated Stewart's employment under paragraph 9.e. because Stewart breached the employment contract by announcing his desire to pursue the Avery business. A majority of Sole Source shareholders voted at the November 4, 1994 shareholders meeting to terminate Stewart's employment. A unanimous decision was not required to terminate Stewart's employment under the Employment Contract.

2. Sole Source and Stewart subsequently entered the Waiver Agreement on November 7, 1994 allowing Stewart to pursue the Avery contract, which was based upon Stewart's termination three (3) days earlier. Moreover, Stewart acknowledged in the Waiver Agreement that he would be pursuing the Avery Business under a "new company, yet un-named."

3. By attending and participating in the November 4, 1994 shareholders meeting, Stewart waived any right to object to the meeting being held.

4. Sole Source also properly terminated Stewart's employment under paragraph 9.d. of the Employment Contract. Sole Source gave Stewart the functional equivalent of thirty (30) days notice by giving him one month salary as a severance benefit and continued use of the corporate vehicle, as provided in the Separation Agreement. Therefore, Sole Source substantially complied with paragraph 9.d. of the Employment Contract.

5. Sole Source properly exercised its repurchase option under the Shareholders Agreement by the Option Notice which Stewart received and to which he responded. The purchase price Sole Source tendered was proper under the Shareholders Agreement. The agreed value under the Shareholders Agreement remained at one dollar ($1.00) per share as of December 1994.

6. Neither Sole Source nor its shareholders requested an independent certified public accountant to adjust the agreed value, nor were they required to do so under the Shareholders Agreement. The language "subject to adjustment" as contained in Paragraphs 12(a)(ii) and 12(b) of the Shareholders Agreement was permissive in nature and not mandatory, such that neither Sole Source nor its shareholders were required to engage a certified public accountant to adjust the agreed value per share.

7. Additionally, neither Sole Source nor its shareholders agreed in writing to reaffirm the agreed value or establish a new value as provided for in Paragraph 12(b), and therefore when Sole Source exercised its repurchase option the agreed value remained at one dollar ($1.00) per share for all purposes.

8. Stewart's refusal to accept the tendered purchase price and to return his shares were a breach of the Shareholders Agreement. The Shareholders Agreement may be specifically enforced by its own terms (Shareholders Agreement, ¶ 15) and under Utah law. Because the Shareholders Agreement contained a clear method for determining the purchase price, the parties intended that Sole Source's exercise of the repurchase option would terminate Stewart's status as a shareholder as of December 31, 1994, the date on which the Option Notice requested Stewart to surrender his shares and as of which the purchase price was tendered.

9. Accordingly, Stewart's status as a shareholder was terminated as of December 31, 1994. Stewart has no standing to assert claims against Sole Source, Junowich, Morris, or Stitt for any events or actions occurring after December 31, 1994. Therefore, the First, Fourth, Fifth, and Eighth Causes of Action in Stewart's Counterclaim and Third-Party Complaint should be dismissed as a matter of law and with prejudice, and the Sixth Cause of Action also should be dismissed to the extent it alleges wrongful conduct and/or seeks legal remedies based upon actions or events occurring after December 31, 1994.

10. Stewart's Second Cause of Action seeking judicial dissolution of Sole source because of alleged "oppression of a minority shareholder" should be dismissed as a matter of law and with prejudice because the claim is moot, since Sole Source dissolved on June 30, 1996 by the terms of its own articles of incorporation.

11. For the reasons set forth above, the Court denies Defendant's Motion to Compel Production of Documents because it seeks discovery relating to time periods after December 31, 1994, which items are not discoverable given the termination of Stewart's status as shareholder on that date. For the same reasons, Plaintiff's Motion for Protective Order is granted.

12. Plaintiff's Motion to Compel Production of Documents is granted in part based upon the stipulation of the parties with regard to Request No. 9. The Court reserves ruling on all other issues raised in the Motion.

DATED this 14 day of Dec, 1998.

BY THE COURT:

HONORABLE WILLIAM W. BARRETT
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:

COHNE, RAPPAPORT & SEGAL

JEFFREY L. SILVESTRINI
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 30th day of November, 1998, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendants

Barbara J McDaniel

216221
#13314-001

ADDENDUM "J"

JUDGMENT AND ORDER
Dated December 14, 1998

GARY L. JOHNSON [A4353]
MATTHEW C. BARNECK [A5249]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff, Counterclaim Defendant,
and Third-Party Defendants
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant, and BRAD STEWART, Defendant and Counterclaimant,	**JUDGMENT and ORDER**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge William W. Barrett

This matter came before the Court as previously scheduled on July 1, 1998, on Plaintiff's Motion for Partial Summary Judgment and also on Defendant's Motion to Compel

Production of Documents, Plaintiff's Motion for Protective Order, and Plaintiff's Motion to Compel Production of Documents, before the Honorable William W. Barrett of the Third Judicial District Court at 450 South State Street, Courtroom W35, Salt Lake City, Utah. The Plaintiff was present through its officers William Morris and Kevin Stitt and was represented by its counsel Matthew C. Barneck of RICHARDS, BRANDT, MILLER & NELSON. The Defendant Brad Stewart was present and represented by his counsel Jeffrey L. Silvestrini of COHNE, RAPPAPORT & SEGAL.

For reasons detailed in the accompanying Findings of Fact and Conclusions of Law, the Court held a further hearing in this matter on Tuesday, November 17, 1998 to consider Defendant's Motion for New Trial/Reconsideration of Summary Judgment and Plaintiff's Request for Further Ruling. The Court received and reviewed the memoranda of the parties, heard oral argument on all pending matters, and has entered Findings of Fact and Conclusions of Law of this same date. Based upon the foregoing, the Court hereby ORDERS, ADJUDGES and DECREES as follows:

1. Defendant Brad Stewart's status as a shareholder of Sole Source Media, Inc. was terminated on December 31, 1994 by Sole Source's proper exercise of its stock repurchase option, as detailed in the Findings of Fact and Conclusions of Law.

2. The First, Fourth, Fifth, and Eighth Causes of Action of Brad Stewart's Counterclaim and Third-Party Complaint shall be and are hereby dismissed as a matter of law and with prejudice, and the Sixth Cause of Action also is dismissed to the extent it alleges wrongful conduct and/or seeks legal remedies based upon actions or events occurring after December 31, 1994.

3. The Second Cause of Action of Stewart's Counterclaim and Third-Party Complaint is also dismissed as a matter of law and with prejudice because it is moot, based upon Sole Source's earlier dissolution under the terms of its articles of incorporation.

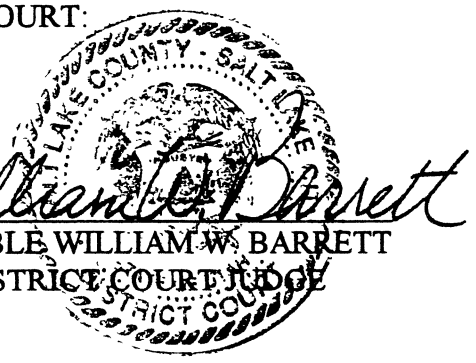
4. Defendant's Motion to Compel Production of Documents is denied.

5. Plaintiff's Motion for Protective Order is granted, and Plaintiff's Motion to Compel Production of Documents is granted in part based upon a stipulation of the parties. The Court reserves ruling on all other issues raised in Plaintiff's Motion to compel Production of Documents.

IT IS SO ORDERED.

DATED this 14 day of ~~November~~ Dec, 1998.

BY THE COURT:



HONORABLE WILLIAM W. BARRETT
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:

COHNE, RAPPAPORT & SEGAL

JEFFREY L. SILVESTRINI
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 30th day of November, 1998, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendants

Barbara J. McDaniel

216255
#13314-001

ADDENDUM "K"

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL
Dated April 26, 1999

MATTHEW C. BARNECK [A5249]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff, Counterclaim Defendant,
and Third-Party Defendants
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant and BRAD STEWART, Defendants and Counterclaimant,	**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge William W. Barrett

This matter came before the Court on the Plaintiff's Motion to Compel dated March 19, 1998. The Motion was fully briefed and first argued before the Court on July 1, 1998, along with two (2) other discovery Motions and a Motion for Partial Summary Judgment. The Court's ruling issued September 2, 1998 addressed only the Motion for Partial Summary Judgment.

A subsequent hearing was held on November 17, 1998, and following that the Court entered Findings of Fact and Conclusions of Law and a Judgment and Order each dated December 14, 1998. Those Orders addressed the other discovery Motions but reserved ruling on the Plaintiff's Motion to Compel, except with regard to Request No. 9 as to which the parties reached a stipulation.

Plaintiff then filed a subsequent Request for Further Ruling dated March 17, 1999 with regard to Request Nos. 4 through 8 of the Plaintiff's First Request for Production of Documents, as addressed in the Plaintiff's Motion to Compel. This Court issued its Ruling on April 12, 1999 granting the Plaintiff's Motion to Compel with respect to Request Nos. 4 through 8.

Based on the foregoing, the Court hereby ORDERS as follows:

1. Plaintiff's Motion to Compel is granted with respect to Request Nos. 4 through 8 of Plaintiff's First Request for Production of Documents.

2. The documents requested shall be produced within thirty (30) days of this Order.

DATED this 26 day of April, 1999.

BY THE COURT:

William W. Barrett

HONORABLE WILLIAM W. BARRETT
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:

COHNE, RAPPAPORT & SEGAL, P.C.

JEFFREY L. SILVESTRINI
Attorneys for Defendant and Third-Party Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 22nd day of April, 1999, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendant and Third-Party Plaintiff

Barbara J. McDaniel

248261
bjm:4/15/99
#13314-001

ADDENDUM "L"

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW
Dated July 13, 1999

MATTHEW C. BARNECK [A5249]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff, Counterclaim Defendant,
and Third-Party Defendants
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant and BRAD STEWART, Defendants and Counterclaimant,	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge William W. Barrett

This matter came before the Court on the Plaintiff's Motion for Award of Attorney Fees. The Court has received and reviewed that Motion along with the accompanying Memorandum in Support and the Affidavit of Matthew C. Barneck, each of which were dated April 23, 1999. The Court also received and reviewed Defendants' Memorandum in Opposition to Plaintiff's Motion for Award of Attorney fees dated May 10, 1999, and Plaintiff's Reply Memorandum in Support of Motion for Award of Attorney Fees dated May 18, 1999. The Court then issued its ruling by disposition summary dated June 7, 1999.

Based upon the foregoing, the Court now enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Court finds the following facts in relation to the Plaintiff's Motion for Award of Attorney Fees:

1. Defendants' Counterclaim alleged certain causes of action based upon an Employment Contract dated December 1, 1993 between Defendant Brad K. Stewart ("**Stewart**") and Plaintiff Sole Source Media, Inc. ("**Sole Source**"), including claims for declaratory judgment, breach of contract, and breach of the implied covenant of good faith and fair dealing.

2. By a Motion for Partial Summary Judgment dated March 3, 1998 (the "**MPSJ**"), Sole Source sought the dismissal of those and other causes of action in the Counterclaim.

3. Through a series of rulings detailed in Plaintiff's Memorandum, the Court granted the MPSJ and ultimately entered Findings of Fact and Conclusions of Law and a Judgment and Order dated December 14, 1998.

4. The Employment Contract contains the following provision regarding the recovery of attorney fees:

> In the event that any action is filed in relation to this Contract, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called upon to pay, a reasonable sum for the successful party's attorneys' fees.

(Employment Contract, ¶ 16.)

5. The parties also filed a series of discovery Motions including the following:

a. Plaintiff's Motion to Compel dated March 19, 1998.

b. Defendants' Motion to Compel Production of Documents dated February 3, 1998.

c. Plaintiff's Motion for Protective Order dated February 13, 1998.

Those Motions were briefed and heard by the Court as detailed in the Plaintiff's Memorandum.

6. The Court ruled in favor of Sole Source and the Third-Party Defendants on all of those Motions.

7. In pursuing the MPSJ and in pursuing and defending the discovery Motions, Sole Source and the Third-Party Defendants incurred attorney fees of $8,394.85 and costs of $367.82, for a total of $8,762.67. The attorney fees are based upon the number of hours worked and the rates charged as identified in the Affidavit of Matthew C. Barneck, ¶¶ 4-8. The costs incurred are itemized in ¶ 9 of the Affidavit.

8. The Affidavit of Matthew C. Barneck adequately and properly identifies the specific work performed in relation to the MPSJ and the discovery Motions, as shown in ¶¶ 4-6 of

the Affidavit. The Affidavit also fairly allocates and categorizes the proportion of fees relating to the MPSJ that were incurred to obtain a dismissal of claims "in relation to" the Employment Contract.

9. Defendants presented no opposing evidence regarding the attorney fees and costs sought in the Plaintiff's Motion.

CONCLUSIONS OF LAW

The Court now makes the following Conclusions of Law with regard to the Plaintiff's Motion for Award of Attorney Fees.

1. The portions of the Counterclaim identified in the Findings No. 1 above constitute an action in relation to the Employment Contract. Sole Source was the successful party and Stewart was the unsuccessful party in that action, as contemplated in ¶ 16 of the Employment Contract. Accordingly, the Court concludes that an award of fees and costs to Sole Source is appropriate.

2. With respect to each of the discovery Motions identified in the Findings of Fact above, Sole Source was the prevailing party and Stewart was the losing party as contemplated by Rule 37(a)(4) of the Utah Rules of Civil Procedure. The Court concludes that Stewart's pursuit and defense of those Motions was not substantially justified and that no other circumstances make an award of expenses unjust. Accordingly, the Court concludes that an award of fees and expenses to Sole Source and Third-Party Defendants is appropriate.

3. Considering the difficulty of the litigation, the efficiency of the attorneys in presenting the case, the reasonableness of the number of hours spent on the case, fees customarily

charged in the Salt Lake City area for similar services, the amount involved in the case and the results attained, and the expertise and experience of the attorneys involved, the Court concludes that the amount of attorney fees and costs Plaintiff seeks is reasonable. Specifically, the Court concludes that the amount and type of work performed was reasonable given the nature of the case, and that the rates charged by the Plaintiff's counsel were reasonable.

4. The Court concludes that Defendant Stewart should pay to Sole Source and Third-Party Defendants $8,394.85 in attorney fees and $367.82 in costs, for a total of $8,762.67.

DATED this 13 day of July, 1999.

BY THE COURT:

William W. Barrett

HONORABLE WILLIAM W. BARRETT
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:

COHNE, RAPPAPORT & SEGAL, P.C.

JEFFREY L. SILVESTRINI
Attorneys for Defendant and Third-Party Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 21st day of June, 1999, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendant and Third-Party Plaintiff

Barbara J. McDaniel

257211
bjm:6/21/99
#13314-001

ADDENDUM "M"

ORDER AWARDING ATTORNEY FEES
Dated July 13, 1999

MATTHEW C. BARNECK [A5249]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff, Counterclaim Defendant,
and Third-Party Defendants
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant and BRAD STEWART, Defendants and Counterclaimant,	**ORDER AWARDING ATTORNEY FEES**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge William W. Barrett

This matter came before the Court on the Plaintiff's Motion for Award of Attorney Fees dated April 23, 1999. The Court considered the Plaintiff's Motion, its supporting Memorandum, and the Affidavit of Matthew C. Barneck, as well as the Defendants' Memorandum in Opposition and the Plaintiff's Reply Memorandum. The Court issued its ruling without a hearing by a Disposition Summary dated June 7, 1999, and granted the Plaintiff's Motion for Award of Attorney Fees. The Court further has entered Findings of Fact and Conclusions of Law of this same date.

Based up the foregoing, the Court hereby ORDERS that Defendant Brad K. Stewart shall pay to the Plaintiff and Third-Party Defendants $8,394.85 in attorney fees and $367.82 in costs, for a sum total of $8,762.67. That amount shall be paid within thirty (30) days after entry of this Order.

DATED this 13 day of June, 1999.

BY THE COURT:

William W. Barrett

HONORABLE WILLIAM W. BARRETT
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM:

COHNE, RAPPAPORT & SEGAL, P.C.

JEFFREY L. SILVESTRINI
Attorneys for Defendant and Third-Party Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 21st day of June, 1999, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendant and Third-Party Plaintiff

Barbara J. McDonald

257242
bjm:6/21/99
#13314-001

ADDENDUM "N"

AFFIDAVIT OF MATTHEW C. BARNECK
Dated April 23, 1999

MATTHEW C. BARNECK [A5249]
RICHARDS, BRANDT, MILLER & NELSON
Attorneys for Plaintiff, Counterclaim Defendant,
and Third-Party Defendants
Key Bank Tower, Seventh Floor
50 South Main Street
P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone: (801) 531-2000
Fax No.: (801) 532-5506

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SOLE SOURCE MEDIA, INC., a Utah Corporation, Plaintiff and Counterclaim Defendant, vs. PROLOGIC, INC., a Utah Corporation, Defendant and BRAD STEWART, Defendants and Counterclaimant,	**AFFIDAVIT OF MATTHEW C. BARNECK**
BRAD STEWART, Third-Party Plaintiff, vs. DONALD JUNOWICH, WILLIAM MORRIS and KEVIN STITT, Third-Party Defendants.	Civil No. 950907433 Judge William W. Barrett

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

I, MATTHEW C. BARNECK, being first duly sworn depose and state as follows:

1. I am over the age of eighteen (18) years and otherwise competent to testify to the facts set forth in this Affidavit.

2. I am a member in good standing of the Utah State Bar Association and have been since 1988, and have been continuously engaged in the practice of law in the State of Utah since 1988. I am also a member in good standing of the Colorado State Bar Association since 1996.

3. I have been the principal attorney representing Plaintiff Sole Source Media, Inc. ("**Sole Source**") and Third-Party Defendants William Morris ("**Morris**"), Kevin Stitt ("**Stitt**"), and Donald Junowich ("**Junowich**") in this matter.

4. In pursuing Plaintiff's Motion to Compel and defending against Stewart's Motion to Compel including the accompanying Motion for Protective Order, Plaintiff and Third-Party Defendants have incurred the following fees and costs:

Description of Work	**Attorney**	**No. of Hours**	**Amount of Fees/Costs**
Legal research to prepare Motion for Protective Order, Memorandum in Opposition to Defendant's Motion to Compel, and Plaintiff's Motion to Compel; draft each of those Motions and Memoranda; evaluate Defendant's responses to each; legal research for and drafting of Reply Memoranda in Support of Plaintiff's Motion for Protective Order and Motion to Compel; draft Request for Further Ruling on Discovery Motions.	Matthew C. Barneck Brett L. Tolman (law clerk) Cheri K. Gochberg (law clerk)	28.0 4.8 4.5	$ 2,304.10 264.00 247.50
	Total	**37.3**	**$ 2,815.60**

5. In pursuing the Motion for Partial Summary Judgment on behalf of Sole Source, Morris, Stitt, and Junowich, the following work was done and attorney fees incurred:

Description of Work	**Attorney**	**No. of Hours**	**Amount of Fees/Costs**
Legal research to prepare Motion for Partial Summary Judgment; draft Motion, Memorandum, and supporting Affidavits; evaluate Defendant's Memorandum in Opposition; legal research for and drafting of Reply Memorandum in Support of Motion for Partial Summary Judgment; prepare Findings of Fact and Conclusions of Law and Judgment and Order, to implement Court's September 2, 1998 ruling; legal research for and drafting of Memorandum in Opposition to Defendant's Motion for Reconsideration/New Trial.	Matthew C. Barneck	36.3	**$4,489.50**

For reasons set forth in the accompanying Memorandum, Sole Source seeks an award of at least fifty percent (50%) of these fees related to its Motion for Partial Summary Judgment, in a precise amount to be determined by the Court. Fifty percent (50%) of that amount equals $2,244.75.

6. Much of the work on behalf of Plaintiff and Third-Party Defendants was done to pursue or defend all of the four (4) motions described above and cannot be segregated feasibly. In that regard, the following work was done and the following fees incurred:

Description of Work	Attorney	No. of Hours	Amount of Fees/Costs
Prepare for July 1, 1998 hearing on all motions including preparation of exhibits, hearing binders, and outline for oral argument; attend hearing and argue all four (4) Motions; prepare for and attend November 17, 1998 hearing on Defendant's Motion for Reconsideration/New Trial and Objections to Findings of Fact and Conclusions of Law, and on Plaintiff's Request for Further Ruling re discovery motions; further preparation of final Findings of Fact and Conclusions of Law and Judgment and Order; prepare Motion for Attorney Fees.	Matthew C. Barneck	24.7	**$3,334.50**

7. Plaintiff and Third-Party Defendants have also incurred the following costs in connection with the work described above:

Type of Cost	Amount
Photocopies	$ 102.70
Electronic legal research	155.43
Hearing exhibits and hearing binders	109.69
Total	**$ 367.82**

8. The total amount of fees and costs incurred in connection with these Motions, for which an award is sought, is at least the following:

Total fees:	$ 8,394.85
Total costs:	367.82
GRAND TOTAL	**$ 8,762.67**

9. The work described above and the amount of hours spent performing that work were reasonable and necessary given the nature of the case, the claims alleged by Defendant

and Third-Party Plaintiff, and the complexity of the facts and legal issues involved. The rates charged for Matthew C. Barneck range from $110.00 to $135.00 per hour over the span of the nearly two (2) years time during which the work was performed. The rate for law clerks Brett L. Tolman and Cheri K. Gochberg was $55.00. Those rates are reasonable and comparable to the rates of other attorneys and law clerks in the Salt Lake County, Utah, area with similar experience in similar cases.

10. The description above of work performed, including the number of hours and the amount of fees and costs incurred, is the result of a careful review of billings over the past two (2) years. The majority of the total fees and costs actually incurred by Plaintiff and Third-Party Defendants in this action have not been included in this Affidavit, but only those which directly relate to the motions identified above on which Plaintiff and Third-Party Defendants have been the prevailing parties. With regard to the Motion for Partial Summary Judgment, Sole Source only seeks fees for the approximate portion of that work which related to the Employment Contract.

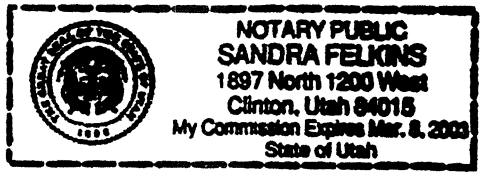
DATED this 23 day of April, 1999.

MATTHEW C. BARNECK

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 23 day of April, 1999, personally appeared before me, MATTHEW C. BARNECK, whose identity has been proven on the basis of satisfactory evidence, being first duly

sworn, acknowledges that he executed the foregoing instrument, for the purposes stated therein, of his own voluntary act.



Sandra Felkins
NOTARY PUBLIC
My Commission Expires:
March 8, 2003

00654

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 23rd day of April, 1999, to the following:

Jeffrey L. Silvestrini, Esq.
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Attorneys for Defendant and Third-Party Plaintiff

Barbara J. McDaniel

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bjm:4/23/99
#13314-001

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